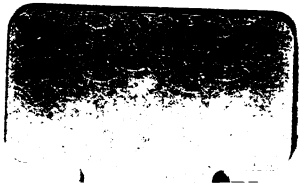

FOURTEENTH ANNUAL REPORT

OF THE

BUREAU

OF

Labor and Industrial Statistics

FOR THE

STATE OF VIRGINIA.

1911

RICHMOND
DAVIS BOTTOM, SUPERINTENDENT OF PUBLIC PRINTING
1911

COMMONWEALTH OF VIRGINIA,
BUREAU OF LABOR AND INDUSTRIAL STATISTICS,
COMMISSIONER'S OFFICE,
RICHMOND, VA., *October* 3, 1911.

To His Excellency, WM. HODGES MANN,
Governor.

DEAR SIR:

It is with pleasure that I transmit herewith the fourteenth annual report of this bureau.

Very respectfully yours,

James B. Doherty,

Commissioner.

Introduction.

The steady advance in the industrial growth of the Commonwealth is gratifying. The calendar year of 1910 gave a net gain in product value of $15,979,162.18. Thirty-five industries showed increases amounting to $16,899,482.27, while decreased product value occurred only in seven, aggregating $920,320.09.

Attention is called to the necessity for proper laws for the regulation of mining in the State, and the attention of the General Assembly is respectfully called to the article on that subject contained in the thirteenth annual report of this department. The rapid development of our mining interests makes such laws an immediate necessity.

In response to a general demand, a compendium of all the statutes affecting labor have been incorporated in this report.

Attention is especially called to the report of the factory inspector, as it gives a comprehensive idea of that special feature of the work of the department.

Building Trades

Under this general classification is placed along with contractors and builders adjunct lines in manufacturing. These, according to custom, have been ranged in the beginning of the report and are followed by the other industries in regular order. The sharp recovery made in 1909 from the business depression of 1907 was noted in the last report, when a net gain was shown over the operations of 1908 of $2,094,737.52. The year 1910 gave evidence of a still greater advance, since each industry in this classification exhibited a substantial increase in business, which made the aggregate excess, in the nine industries, $4,261,270.62 over the year 1909. A brief statement is appended of the several industries, and for fuller information the reader is referred to the detail tables.

BRICK AND TILE.

Fourteen more plants were in operation than in the year previous and the output value increased $267,528.47. There was no change in hours and wage changes were inconsequential. The general outlook was good.

BRICKLAYERS.

Twelve more firms were operating than the year previous and the value of work done exceeded that of the year previous $105,468.87. Wages and hours were about the same. Future outlook good.

GENERAL CONTRACTORS.

In consequence of increased activity in this line 126 more firms were operating than in the year previous and the value of work done $2,081,739.03 greater than the year before. Work is reported plentiful and the outlook good. Hours of labor remained the same, while slight changes in wages were reported here and there.

LIME AND CEMENT.

Three more plants were in operation than in the year previous and an increase in product value is reported of $282,122.56. Hours of labor remained the same and only slight changes appear in average daily wages. Outlook reported good.

PAINTERS AND PAPERHANGERS

Eighteen more firms were operating than in the year previous and there was a gain in the value of work done of $50,698.45. Hours of labor were unchanged and only slight changes occurred in wages. Outlook good.

PLUMBERS, GASFITTERS AND TINNERS.

Thirty more firms were operating than in the preceding year. The gain in business was $200,096.83. Hours unchanged and only slight changes in average daily pay. Future business promises fair.

SASH, DOORS AND BLINDS.

With one more plant reporting than in the year previous the product value showed a gain of $345,457.86. Hours remained the same and wage changes were slight. Prospects reported good.

SAW MILLS.

Many of the small mills heretofore idle resumed work and 349 more reported than in the previous year. The increase in product value was $916,088.13. Hours unchanged, with slight changes in average daily pay.

STONE CONTRACTORS AND QUARRYMEN.

Five more firms were operating than in the year previous. The value of product increased $12,070.42. Hours unchanged. Some slight wage changes reported. Business fair.

Brick and Tile.

Sixty-one plants were in operation against forty-seven the year previous. The product value showed an increase of $267,528.47, wages paid increased $141,564.62 and capital invested increased $350,650.21. Hours of labor practically unchanged, a few plants working eight hours and the rest ten. Slight changes appear in the average daily wages paid (see comparative statement). The average number of days of operation was 164 against 171 for the year 1909.

COMPARISON.

	1909	1910
Value of product	$1,111,241 28	$1,378,769 75
Wages paid	478,764 93	620,329 55
Capital invested	1,159,474 93	1,510,125 14

Average Monthly Pay of Office Help.

Bookkeepers	82 25	72 67
Clerks	34 00	66 71
Managers	117 63	118 32
Salesmen	90 00	84 37
Stenographers	40 50	36 33

Average Daily Pay.

	White.	Col'd.	White.	Col'd.
Brickmakers	$1 64	$1 40	$1 50	$1 44
Engineers	2 00	1 70	2 07	1 87
Firemen	1 50	1 44	1 51	1 49
General help	1 40	1 34	1 32	1 46
Kilnmen	1 59	1 53	1 68	1 54
Watchmen	1 47	....	1 58	....

TABLE No. 1—BRICK AND TILE.

Plants Operated.	Value of Product	Wages Paid	Capital Invested	Monthly Pay of Office Help: Bookkeepers	Monthly Pay of Office Help: Clerks	Monthly Pay of Office Help: Managers	Monthly Pay of Office Help: Salesmen	Monthly Pay of Office Help: Stenographers	Monthly Pay
61	$1,378,769 75	$620,329 55	$1,510,125 14	20	7	39	8	3	$36 33
				$72 67	$66 71	$118 32	$84 37		

Plants Operated	Brickmakers: White	Brickmakers: Colored	Brickmakers: Daily Pay	Engineers: White	Engineers: Daily Pay	Engineers: Colored	Engineers: Daily Pay	Firemen: White	Firemen: Daily Pay	Firemen: Colored	Firemen: Daily Pay	General Help: White	General Help: Daily Pay	General Help: Colored	General Help: Daily Pay	Kilnmen: White	Kilnmen: Daily Pay	Kilnmen: Colored	Kilnmen: Daily Pay	Watchmen: Number	Watchmen: Daily Pay	Hours of Labor	No. Days Operated
61	217	561	$1 44	32	$2 07	8	$1 87	23	$1 51	24	$1 49	2 8	$1 32	533	$1 46	72	$1 68	120	$1 54	17	$1 58	8-10	162
			$1 50																				

Bricklayers.

Thirty-four firms were in operation against twenty-two in the previous year. The value of work done exceeded that of 1909 by $105,468.87. There were twenty-nine firms working eight hours, one working nine and four working ten hours per day. For wage changes see comparative statement.

COMPARISON.

	1909	1910
Value of work	$301,953 00	$407,421 87

Average Daily Pay.

Bricklayers (white)	4 94	4 93
Bricklayers (colored)	2 70	3 19
Helpers (white)	1 83	1 95
Helpers (colored)	1 93	2 09
Laborers (white)	1 75	1 21
Laborers (colored)	1 91	1 79

TABLE No. 2

Plants Operated	Value of Work	Bricklayers				Helpers				Laborers				Hours of Labor
		White	Daily Pay	Colored	Daily Pay	White	Daily Pay	Colored	Daily Pay	White	Daily Pay	Colored	Daily Pay	
34	$407,421 87	183	$4 93	8	$3 19	11	$1 95	163	$2 09	9	$1 21	56	$1 79	8-10

General Contractors.

Three hundred and fifty-five firms reported against two hundred and twenty-four in the preceding year. Value of work done increased $2,081,739.03. Outlook for 1911 is everywhere reported excellent. No special change in hours of labor. For wages see comparative statement.

COMPARISON.

	1909	1910
Value of work done	$6,568,323 50	$8,650,062 53

Average Daily Pay.

	White.	Col'd.	White.	Col'd.
Bricklayers	$4 60	$2 82	$4 45	$3 25
Bricklayer's help	1 89	....	1 74	1 72
Carpenters	2 45	2 12	2 55	1 75
Laborers	1 26	1 41	1 43	1 54
Lathers	2 39	2 29	2 37	1 97
Painters	2 63	....	2 54	....
Paperhangers	2 54	....	2 44	....
Plasterers	3 69	3 23	3 76	3 48
Plumbers	3 87	....	3 53	....
Stone cutters	3 53	....	3 70	....
Stone masons	3 86	....	3 46	....
Tinners	3 02	....	2 97	....

TABLE No. 3—GENERAL CONTRACTORS.

No. of Firms	Value of Work	Bricklayers				Bricklayers' Help				Carpenters				Laborers				Lathers			
		White	Daily Pay	Colored	Daily Pay	White	Daily Pay	Colored	Daily Pay	White	Daily Pay	Colored	Daily Pay	White	Daily Pay	Colored	Daily Pay	White	Daily Pay	Colored	Daily Pay
355	$8,650,062 53	462	$4 45	52	$3 25	103	$1 74	227	$1 72	2,760	$2 55	62	$1 75	903	$1 43	1,134	$1 54	109	$2 37	43	$1 97

No. of Firms	Painters		Paperhangers		Plasterers				Plumbers, Gas Fitters and Tinners				Stonecutters and Masons				Hours of Labor
	Number	Daily Pay	Number	Daily Pay	White	Daily Pay	Colored	Daily Pay	Plumbers and Gas Fitters	Daily Pay	Tinners	Daily Pay	Cutters	Daily Pay	Masons	Daily Pay	
355	202	$2 54	13	$2 44	203	$3 76	40	$3 48	82	$3 53	104	$2 97	77	$3 70	62	$3 46	8-10*

*In the cities the hours are usually eight to nine, while elsewhere ten hours constitute a day's work.

Lime and Cement.

Twenty-four plants were in operation against twenty-one for the year previous. Value of product increased $282,122.86, wages paid $271,927.50 and capital invested $577,191.68. The excess in wages was largely due to development. Hours of labor were unchanged, ranging from eight to twelve. For wage changes see comparative statement. The average number of days operated was 257½ against 244 for the year previous.

COMPARISON.

	1909	1910
Value of product	$1,283,918 16	$1,566,041 02
Wages paid	340,013 25	611,940 75
Capital invested	1,682,561 52	2,259,753 20
Average Monthly Pay of Office Help.		
Bookkeepers	72 77	77 67
Clerks	56 15	53 84
Managers	124 38	141 48
Salesmen	132 33	116 19
Stenographers	35 71	56 64
Average Daily Pay.		
Blacksmiths	1 95	1 94
Burners	1 38	1 56
Carpenters	2 33	2 07
Coopers	1 30	1 43
Electricians	....	2 60
Engineers	2 89	2 77
Foremen	2 33	2 23
General help	1 48	1 49
Laborers	1 30	1 36
Machinists	2 24	2 31
Masons	....	2 45
Quarrymen	1 39	1 48

TABLE No. 4—LIME AND CEMENT.

Plants Operating	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help: Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
24	$1,566,041 02	$611,940 75	$2,259,753 20	12	$77 67	26	$53 84	27	$ 141 48	7	$ 116 19	9	$56 64

Plants Operating	Blacksmiths: Number	Daily Pay	Burners: Number	Daily Pay	Carpenters: Number	Daily Pay	Coopers: Number	Daily Pay	Engineers: Number	Daily Pay	Foremen: Number	Daily Pay
24	5	$ 1 94	76	$ 1 56	14	$ 2 07	47	$ 1 43	17	$ 2 77	23	$ 2 23

Plants Operating	Gen'l Help: Number	Daily Pay	Laborers: Number	Daily Pay	Machinists and Electricians: Number	Daily Pay	Masons: Number	Daily Pay	Quarrymen: Number	Daily Pay	Hours of Labor	No. Days Operating
24	351	$ 1 49	691	$ 1 36	5 41	$ 2 60* 2 31	2	$ 2 45	214	$ 1 48	8-12	257½

* Electricians
† Chiefly ten hours

Painters and Paperhangers.

One hundred and nine firms were operating against ninety-one the year previous. The value of work done exceeded that of the year previous $50,698.45. An advance in wages is noted. Hours of labor varying from eight to ten, the former prevailing in cities where labor is organized.

COMPARISON.

	1909	1910
Value of work done	$559,046 15	$609,744 60

Average Daily Pay.

Painters	2 31	2 58
Paperhangers	2 81	2 86
Scrapers and apprentices	1 42	1 33

TABLE No. 5

Firms Reporting	Value of Work Done	Painters			Paperhangers			Scrapers and Apprentices		
		Number	Daily Pay	Hours	Number	Daily Pay	Hours	Number	Daily Pay	Hours
109	$609,744 60	411	$2 58	8-10	119	$2 86	8-10	58	$1 33	8-10

Plumbers, Gasfitters and Tinners.

One hundred and fifty-five firms were operating against one hundred and twenty-six for the year previous. The value of work done exceeded that of the preceding year $200,096.83. A slight reduction of the general average of wages is noted. This reduction, however, did not obtain in the cities where labor was organized; there wage scale and hours of labor remained the same. Hours of labor varied from eight to ten, according to locality.

COMPARISON.

	1909	1910
Value of work done	$1,607,499 05	$1,807,595 88

Average Daily Pay.

Apprentices	1 02	1 00
Laborers (white)	1 56	1 58
Laborers (colored)	1 40	1 42
Plumbers and gasfitters	3 59	3 32
Tinners	2 88	2 68

TABLE No. 6.

Firms Operating	Value of Work Done	Apprentices			Laborers					Plumbers and Gasfitters			Tinners		
		Number	Daily Pay	Hours	White	Daily Pay	Colored	Daily Pay	Hours	Number	Daily Pay	Hours	Number	Daily Pay	Hours
155	$1,807,595 88	242	$1 00	8-10	130	$1 58	224	$1 42	8-10	433	$3 32	8-10	195	$2 68	8-10

Sash, Doors and Blinds.

Twenty-six plants were in operation against twenty-five the year previous. Product value increased $345,457.86, wages paid $81,493.31 and capital invested $203,892.49. Hours and wages were about the same. The average number of days operated was 292 against 280 for the year previous.

COMPARISON.

	1909	1910
Vale of product	$1,532,441 55	$1,877,899 41
Wages paid	377,441 88	458,935 19
Capital invested	853,793 80	1,057,686 29

Average Monthly Pay of Office Help.

Bookkeepers	80 17	82 93
Clerks	60 26	60 64
Managers	108 30	108 34
Salesmen	120 29	86 37
Stenographers	36 55	42 98

Average Daily Pay.

Apprentices	81	95
Bench hands	2 20	2 19
Engineers and firemen	1 86	1 95
Foremen and inspectors	2 76	2 73
Glaziers	1 65	1 42
Laborers and general help	1 25	1 33
Machine hands	2 23	2 00
Watchmen	1 05	1 50

TABLE No. 7—SASH, DOORS AND BLINDS.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
26	$1,877,899 41	$ 458,935 19	$1,057,686 29	22	$82 93	29	$60 64	28	$108 34	8	$86 37	12	$42 98

Plants Operated	Apprentices		Bench Hands		Engineers and Firemen		Foremen and Inspectors		Glaziers		Laborers and Gen'l Help		Machine Hands		Watchmen		Hours of Labor	Average No. Days Operated
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay		
26	20	$ 95	295	$ 2 19	10	$ 1 95	10	$ 2 73	11	$ 1 42	308	$ 1 33	329	$ 2 00	1	$ 1 50	9-10	292

Saw Mills.

Owing to resumption of work by a number of small mills heretofore out of commission, the number of plants reporting as operating was five hundred and eighty-seven against two hundred and thirty-eight for the year previous. While the value of product increased $916,088.13, wages paid increased $1,232,510.30. For wage changes see comparative statement. Hours of labor about the same. Future outlook reported fair.

COMPARISON.

	1909	1910
Value of product	$9,172,390 55	$10,088,478 68
Wages paid	2,265,741 74	3,498,252 04

Average Daily Pay.

	White.	Col'd.	White.	Col'd.
Engineers	$1 65	$1 27	$1 56	$1 26
Foremen	2 09	1 34	2 06	1 36
Laborers	1 21	1 15	1 27	1 13
Loggers	1 22	1 11	1 33	1 11
Machinists	2 68	....	3 00	....
Miscellaneous help	1 24	1 04	1 07	1 08
Sawyers	2 18	1 84	2 02	1 40
Superintendents	3 34	....	3 20	....
Teamsters	1 23	1 11	1 24	1 10

TABLE No. 8—SAW MILLS.

No. Plants Operated	Value of Product	Wages Paid	Engineers				Foremen				Laborers				Loggers			
			White	Daily Pay	Colored	Daily Pay	White	Daily Pay	Colored	Daily Pay	White	Daily Pay	Colored	Daily Pay	White	Daily Pay	Colored	Daily Pay
587	$10,088,478 68	$3,498,252 04	461	$1 56	112	$1 26	379	$2 06	32	$1 36	3,583	$1 27	3,992	$1 13	1,283	$1 33	870	$1 11

No. Plants Operated	Machinists		Miscellaneous Help				Sawyers				Superintendents		Teamsters				Hours of Labor
	White	Daily Pay	White	Daily Pay	Colored	Daily Pay	White	Daily Pay	Colored	Daily Pay	White	Daily Pay	White	Daily Pay	Colored	Daily Pay	
587	63	$3 00	715	$1 07	621	$1 08	521	$2 02	34	$1 40	122	$3 20	669	$1 24	546	$1 10	8-12*

*Ten hours was the usual day's work, only a few plants having worked above or below that number.

Stone Contractors and Quarrymen.

Twenty-five firms were operating against twenty the year previous. An increase of $12,070.42 is shown in output value. Hours of labor ranged from eight to ten, a majority working ten hours. For wage changes see comparative statement.

COMPARISON.

	1909	1910
Value of product	$293,636 02	$305,706 44
Average Daily Pay.		
Apprentices	1 06	95
Blacksmiths	2 25	2 48
Drillers	1 65	1 75
Engineers	....	2 11
Foremen	....	3 33
Laborers and general help	1 25	1 36
Polishers	1 55	2 03
Quarrymen	1 17	1 68
Stone cutters (granite)	3 32	3 34
Stone cutters (soft stone)	2 67	2 21
Stone masons	2 40	2 50

TABLE No. 9

Firms Operating	Value of Product	Apprentices		Blacksmiths		Drillers		Engineers		Foremen	
		Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay
25	$ 305,706 44	4	$ 95	8	$ 2 48	6	$ 1 75	9	$ 2 11	3	$ 3 33

Firms Operating	Laborers and Gen'l Help		Polishers		Quarrymen		Stone Cutters				Stone Masons	
							Granite		Soft Stone			
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay
25	292	$ 1 36	3	$ 2 03	41	$ 1 68	3	$ 3 34	9	$ 2 21	4	$ 2 50

Agricultural Implements.

Fourteen plants were in operation in 1910 against eleven for the year preceding. There was an advance in product value $94,269.27, in wages paid $43,319.88 and in capital invested $89,519.47. The hours of labor were in the main ten, three plants working nine and nine and one-half. The average number of days operated was 278 against 268 for the preceding year. Wage changes were unimportant, a decrease showing in some occupations and an increase in others; the new plants being in the main responsible for the changes in average wages. Advances from 5 to 10 per cent. were reported from two plants. The outlook for 1911 was generally reported as encouraging. For details of production, etc., consult the following

COMPARISON.

	1909	1910
Value of product	$470,140 77	$564,110 04
Wages paid	158,934 59	204,254 47
Capital invested	347,980 53	437,500 00
Average Monthly Pay of Office Help.		
Bookkeepers	97 50	83 33
Clerks	52 00	50 55
Managers	148 41	139 14
Salesmen	88 50	108 67
Stenographers	48 10	40 36
Average Daily Pay.		
Blacksmiths	2 08	2 70
Blacksmith's helpers	1 50	1 37
Engineers	2 08	2 20
Foremen	2 75	4 37
Laborers and general help	1 32	1 25
Machinists	2 67	2 59
Machinists' help	2 00	1 64
Mill hands	1 36	1 70
Moulders	2 03	2 03
Painters	1 48	1 59
Pattern makers	3 00	3 25
Polishers	1 60	1 56
Teamsters	1 37	1 50
Woodworkers	1 98	2 30

TABLE No. 10—AGRICULTURAL IMPLEMENTS.

Plants Operating	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Average Monthly Pay	Clerks	Average Monthly Pay	Managers	Average Monthly Pay	Salesmen	Average Monthly Pay	Stenographers	Average Monthly Pay
14	$564,410 04	$204,254 47	$437,500 00	6	$83 33	9	$50 55	12	$139 14	6	$108 67	7	$40 36

Plants Operating	Blacksmiths		Blacksmith's Helpers		Engineers		Foremen		Laborers and General Help		Machinists		Machinists' Help	
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay
14	5	$2 70	21	$1 37	2	$2 20	2	$4 37	141	$1 25	38	$2 59	29	$1 64

Plants Operating	Mill Hands		Moulders		Painters		Pattern-makers		Polishers		Teamsters		Wood-workers		Hours of Labor	Av. No. Days Operated
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay		
14	35	$1 70	96	$2 03	16	$1 59	3	$3 25	9	$1 56	3	$1 50	35	$2 30	9-10	278

Artificial Ice.

Forty-three plants were in operation in 1910 against twenty-eight the year previous. While an increase in product value appears of $259,562.13, wages paid decreased $3,324.43 and capital invested decreased $140,108.64. The falling off in the last two items may be accounted for, in wages, by economies introduced, and in capital invested by charging off wear and tear to machinery. Hours of labor were about the same, varying from eight to twelve. The average number of days operated was 241 against 260 for the year 1909. Insubstantial wage changes appear, which may be noted by consulting the following

COMPARISON.

	1909	1910
Value of product	$ 525,143 55	$ 784,705 68
Wages paid	169,022 01	165,697 58
Capital invested	1,702,515 48	1,562,406 74

Average Monthly Pay of Office Help.

Bookkeepers	61 65	71 77
Clerks	42 00	51 86
Managers	104 20	109 53
Salesmen	70 00	100 00
Stenographers	38 33	40 00

Average Daily Pay.

Drivers and stablemen	1 37	1 46
Engineers	2 40	2 47
Firemen	1 65	1 58
General help	1 35	1 09
Laborers	1 04	1 25
Oilers	1 78	1 77
Pullers	1 40	1 45

TABLE No. 11—ARTIFICIAL ICE.

Plants Operating	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
43	$ 784,705 68	$ 165,697 58	$ 1,562,406 74	17	$ 71 77	14	$ 51 86	31	$ 109 53	1	$ 100 00	1	$ 40 00

Plants Operating	Drivers and Stablemen		Engineers		Firemen		General Help		Laborers		Oilers		Pullers		Hours of Labor	Average No. Days Operated
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay		
43	76	$ 1 46	52	$ 2 47	55	$ 1 58	165	$ 1 09	20	$ 1 25	9	$ 1 77	58	$ 1 45	8-12	241

Bag Factories.

Three plants were in operation and are for the first time embodied in this annual report. In consequence of the industry in some instances being a branch of a larger enterprise, the capital invested in this segment of the business could not be ascertained. Hours of labor—females, nine and one-half to ten hours; males, nine and one-half to ten and one-half hours. Average number of days operated, 306.

RECAPITULATION.

Value of product	$1,109,603 38
Wages paid	57,729 32

Average Monthly Pay of Office Help.

Bookkeepers	68 33
Clerks	40 00
Managers	162 29
Stenographers	23 75

Average Daily Pay.

	Male.	Female.
Cutters	$2 00	$....
Engineers and machinists	3 00	....
Foremen	3 00	....
General help	1 34	76
Printers	1 33	....
Sewers	....	1 17
Turners	1 40	98

TABLE No. 12—BAG FACTORIES.

Plants Operated	Value of Product	Wages Paid	Average Monthly Pay of Office Help							
			Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Stenographers	Monthly Pay
3	$ 1,109,603 38	$ 57,729 32	3	$ 68 33	1	$ 40 00	4	$ 162 29	2	$ 23 75

Plants Operated	Cutters		Engineers and Machinists		Foremen		General Help				Printers		Sewers		Turners				Hours of Labor	Average No. Days Operated
	Male	Daily Pay	Male	Daily Pay	Male	Daily Pay	Male	Daily Pay	Female	Daily Pay	Male	Daily Pay	Female	Daily Pay	Male	Daily Pay	Female	Daily Pay		
3	3	$ 2 00	3	$ 3 00	1	$ 3 00	8	$ 1 34	29	$ 76	15	$ 1 33	90	$ 1 17	4	$ 1 40	6	$ 98	9½-10½	306

Baking Powders.

This industry is embraced in the report for this year for the first time; hence a comparison with the preceding year cannot be made. From the tables following is made a

RECAPITULATION.

	1910
Value of product	$1,167,982 60
Wages paid	55,070 53
Capital invested	428,395 72

Average Monthly Pay of Office Help.

Bookkeepers	137 50
Clerks	34 35
Managers	254 00
Salesmen	111 48
Stenographers	73 69

Average Daily Pay.

	Male.	Female.
Baking powder factory	$1 45	$1 84
Can factory	2 03	1 25
Can factory (under 16 years)	86	....

TABLE No. 13

Plants Operating	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
2	$1,167,982 60	$55,070 53	$428,395 72	4	$137 50	14	$34 35	2	$254 00	37	$111 48	16	$73 69

General Help									
Baking Powder Factory				Can Factory					
Males	Daily Pay	Females	Daily Pay	Males	Daily Pay	Females	Daily Pay	Hours of Labor	Av. No. Days Operated
66	$1 45	41	$1 84	5 32	$ 86* 2 03	19	$1 25	10	211

*Boys under 16 years.

Boots and Shoes.

Six plants were in operation against seven for the year preceding. A falling off is noted in value of product $164,376.92 and in wages paid $51,395.79, while capital invested increased $11,949.52. Hours of labor remained ten. The average number of days worked was 244 against 285 for the year previous. For wage changes see the following

COMPARISON.

	1909	1910
Value of product	$3,983,609 48	$3,819,232 56
Wages paid	684,410 71	633,014 92
Capital invested	1,825,750 00	1,837,699 52

Monthly Pay of Office Help.

Bookkeepers (males)	99 77	130 27
Bookkeepers (females)	48 79	56 67
Clerks (males)	36 79	59 96
Clerks (females)	....	35 78
Managers	257 35	229 92
Salesmen	224 80	247 44
Stenographers	49 05	49 55

Average Daily Pay.

	Male.	Female.	Male.	Female.
Cutters	$1 80	$1 45	$1 79	$1 37
Foremen	....	....	3 29	....
General help	1 47	1 00	1 10	72
Lasters	1 72	....	1 73	1 05
Makers and bottomers	1 96	....	1 94	....
Packers	1 54	1 12	1 45	1 23
Stitchers	1 80	1 25	2 11	1 34

TABLE No. 14—BOOTS AND SHOES

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
6	$3,819,232 56	$633,014 92	$1,837,699 52	3 6	$ 56 67† 130 27	41 52	$35 59 93	21	$229 92	54	$247 44	22	$49 55

Plants Operated	Cutters		Foremen		General Help				Lasters		Makers and Bottomers		Packers				Stitchers				Hours of Labor	No. Days Operated
	Number	Daily Pay	Number	Daily Pay	Males	Daily Pay	Females	Daily Pay	Number	Daily Pay	Number	ily Pay	Males	Daily Pay	Females	Daily Pay	Males	Daily Pay	Females	Daily Pay		
6	2 169	$1 37‡ 1 79	11	$3 29	253	$1 10	14	.72	124 271	$1 05‡ 1 73	248	$1 94	34	$1 45	130	$1 23	7	$2 11	341	$1 34	10	244

‡Females.

Breweries.

The same number of plants in operation report an advance in product value, $145,373.53; in wages paid, $7,091.75, and in capital invested, $348,378.22. Wage changes may be noted from the subjoined comparative statement. Hours of labor range from eight to eleven. The average number of days of operation was 316 against 307 for the year preceding.

COMPARISON.

	1909	1910
Value of product	$1,749,583 57	$1,894,957 10
Wages paid	223,050 04	240,141 79
Capital invested	2,284,221 76	2,632,599 98
Average Monthly Pay of Office Help.		
Bookkeepers	101 39	111 49
Clerks	63 84	84 68
Managers	172 12	178 16
Salesmen	124 47	114 67
Stenographers	53 00	54 00
Average Daily Pay.		
Bottlers	1 64	1 78
Bottler's help	1 44	1 32
Brewers	2 68	2 96
Brewer's help	2 00	2 00
Carpenters	2 70	2 53
Coopers	2 75	3 00
Drivers	2 66	2 84
Engineers	3 35	3 51
Firemen	2 30	2 30
Foremen	3 45	4 17
General help	1 50	1 45
Ice pullers	2 03	2 20
Machinists	3 25	2 87
Stablemen	2 08	1 96
Washhouse hands	....	3 00

TABLE No. 15—BREWERIES

Plants Operating	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
6	$ 1,894,957 10	$ 240,141 79	$ 2,632,599 98	12	$ 111 49	11	$ 84 68	23	$ 178 16	18	$ 114 67	5	$ 54 00

Plants Operating	Bottlers		Bottlers' Help		Brewers		Brewers' Help		Carpenters		Coopers		Drivers		Engineers	
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay
6	98	$ 1 78	42	$ 1 32	68	$ 2 96	2	$ 2 00	7	$ 2 53	1	$ 3 00	48	$ 2 84	14	$ 3 51

Plants Operating	Firemen		Foremen		General Help		Ice Pullers		Machinists		Stablemen		Washhouse Hands		Hours of Labor	No. Days Operated
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay		
6	10	$ 2 30	1	$ 4 17	32	$ 1 45	12	$ 2 20	2	$ 2 87	10	$ 1 96	2	$ 3 00	8-11	316

Brooms and Mattresses.

Twenty-one firms were in operation against nineteen the year previous. The product value increased $6,516.69, while wages paid and capital invested decreased $494.92 and $13,676.47, respectively. Hours of labor, nine and one-half to ten—chiefly ten. Average number of days operated, 247 against 271 for the year 1909. For wage changes see comparative statement.

COMPARISON.

	1909	1910
Value of product	$280,985 09	$287,501 78
Wages paid	49,414 25	48,917 33
Capital invested	154,370 42	140,693 95

Average Monthly Pay of Office Help.

Bookkeepers	58 89	57 38
Clerks	68 33	62 50
Managers	100 83	92 50
Salesmen	83 20	118 83
Stenographers	40 00	43 33

Average Daily Pay.

	Male.	Female.	Male.	Female.
Broom makers	$1 55	$....	$1 42	$....
General help	1 42	87	1 39	89
Mattress makers	1 63	....	1 95	....
Sewers	1 50	1 19	1 50	99
Upholsterers	2 50	....	2 83	....

TABLE No. 16—BROOMS AND MATTRESSES

Firms Operating	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
21	$287,501 78	$48,917 33	$140,693 95	7	57 38	2	$62 50	10	$92 50	6	$118 83	3	$43 33

Firms Operating	Broom Makers		General Help				Mattress Makers		Sewers				Upholsterers		Hours of Labor	No. of Days Operated
	Number	Daily Pay	Males	Daily Pay	Females	Daily Pay	Number	Daily Pay	Males	Daily Pay	Females	Daily Pay	Number	Daily Pay		
21	30	$1 42	36	$1 39	17	.89	39	$1 95	2	$1 50	14	.99	3	$2 83	8-10	247

Canneries.

Owing to improved crop conditions one hundred and sixty-two canneries were in operation against one hundred and twenty-eight for the year previous. Increases appear over the preceding year; in value of product, $322,349.03; wages paid, $49,112.43, and in capital invested, $148,792.55. Hours of labor remained the same—from nine to ten. For wage changes see comparative statement. Average number of days operated, forty-two against fifty-three for 1909.

COMPARISON.

	1909	1910
Value of product	$1,275,423 17	$1,597,772 20
Wages paid	163,816 06	212,928 49
Capital invested	526,490 62	675,283 17

Average Daily Pay.

Cappers	1 83	1 85
Firemen	1 27	1 28
Foremen	1 47	1 86
General help (males)	1 06	1 09
General help (females)	76	75
Pickers, packers and peelers	81	78
Processors	1 29	1 38

TABLE No. 17.

Plants Operating	Value of Product	Wages Paid	Capital Invested	Cappers		Firemen		Foremen	
				Number	Daily Pay	Number	Daily Pay	Number	Daily Pay
162	$ 1,597,772 20	$ 212,928 49	$675,283 17	240	$ 1 85	138	$ 1 28	78	$ 1 86

Plants Operating	General Help				Pickers, Packers and Peelers		Processors		Hours of Labor	No. Days Operating
	Male	Daily Pay	Female	Daily Pay	Number	Daily Pay	Number	Daily Pay		
162	836	$ 1 09	443	$ 75	2938	$ 78	139	$ 1 38	8-10	42

Carriages, Wagons and Buggies.

Thirty-nine plants were operated against thirty-eight in the year preceding. Increases appear in value of product, $233,452.83; in wages paid, $41,519.22, and in capital invested, $93,336.37. Hours of labor remained unchanged. For wage changes see comparative statement. Average number of days operated was 295 against 287 for the year previous. Business reported good and the outlook fair.

COMPARISON.

	1909	1910
Value of product	$1,386,409 76	$1,619,862 59
Wages paid	294,821 54	336,340 76
Capital invested	1,261,051 62	1,354,387 99
Average Monthly Pay of Office Help.		
Bookkeepers	66 85	70 19
Clerks	47 21	53 64
Managers	127 51	126 06
Salesmen	136 43	110 58
Stenographers	51 35	55 42
Average Daily Pay.		
Apprentices	88	79
Blacksmiths	1 98	2 07
Blacksmith's helpers	1 17	1 22
Engineers and firemen	1 36	1 90
Finishers	2 10	2 00
General help	1 39	1 33
Laborers	1 20	1 26
Machine hands	1 56	1 55
Packers and shippers	1 39	1 59
Painters	1 63	1 69
Trimmers	2 10	1 66
Wheelwrights	2 12	1 93
Woodworkers	1 87	1 84

TABLE No. 18—CARRIAGES, WAGONS AND BUGGIES.

Plants Operating	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help								
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
39	$ 1,619,862 59	$ 336,340 76	$ 1,354,387 99	24	$ 70 19	14	$ 53 64	19	$ 126 06	16	$ 110 58	12	$ 55 42

Plants Operating	Apprentices		Blacksmiths		Blacksmiths' Helpers		Engineers and Firemen		Finishers		General Help		Laborers		Machine Hands	
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay
39	10	$ 79	126	$ 2 07	43	$ 1 22	4	$ 1 90	10	$ 2 00	47	$ 1 33	90	$ 1 26	48	$ 1 55

Plants Operating	Packers and Shippers		Painters		Trimmers		Wheelwrights		Woodworkers		Hours of Labor	Average No. Days Operating
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay		
39	15	$ 1 59	158	$ 1 69	53	$ 1 66	20	$ 1 93	148	$ 1 84	8½-10	295

Cigars, Cigarettes and Cheroots.

Forty-one plants were in operation as against thirty-nine for the year previous. Value of product exceeded 1909 by $1,132,946.12, wages paid by $96,278.25, and capital invested, including that of foreign corporations, by $105,510.31. No change of consequence appeared in hours or wages. The average number of days operated was 257 against 275 for the year previous.

COMPARISON.

	1909	1910
Value of product	$7,806,948 34	$8,939,894 46
Wages paid	1,270,210 28	1,366,488 53
Capital invested	3,485,615 36	3,591,125 67

Average Monthly Pay of Office Help.

Bookkeepers	107 05	109 97
Clerks	49 97	60 80
Managers	99 48	107 44
Salesmen	100 44	88 66
Stenographers	45 62	49 75

Average Daily Wages.

	Male.	Female.	Male.	Female.
Apprentices	$....	$ 64	$ 83	$ 72
Bunch breakers	1 17	....	1 17	1 17
Cigar and cheroot makers*	1 59	1 10	1 72	1 30
Engineers	3 59	....	3 55	....
Firemen	1 75	....	1 59	....
Foremen	2 88	....	3 05	....
General help	1 08	85	1 03	84
Inspectors	....	1 31	....	1 44
Little cigar makers	1 25	1 10	1 25	1 15
Machine hands	1 71	1 09	1 67	1 13
Machinists and carpenters	2 99	....	3 04	....
Machine helpers	85	....	96	75
Packers	1 22	1 08	1 28	1 50
Paper box makers	1 25	1 06	1 25	1 13
Rollers and binders	1 00	60	1 02	....
Stampers	....	1 09	1 25	1 09
Strippers	96	92	1 00	90
Watchmen	2 01	....	2 02	....

*Expert cigar makers embraced under this general heading make from $2.00 to $3.00 per day of eight hours.

TABLE No. 19—CIGARS, CIGARETTES AND CHEROOTS

Plants Operating	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
41	$8,939,894 46	$1,366.488 53	$3,591,125 67	9	$109 97	21	$60 80	30	$107 44	18	$88 66	4	$49 75

Plants Operating	Apprentices		Bunch Breakers		Cigar and Cheroot Makers				Engineers and Firemen		Foremen		General Help				Inspectors	
	No. Females	Daily Pay	Number	Daily Pay	Males	Daily Pay	Females	Daily Pay	Number	Daily Pay	Number	Daily Pay	Males	Daily Pay	Females	Daily Pay	Females	Daily Pay
41	3 167	.82‡ .72	540	$1 17	128	$1 72	203	$1 30	12 7	$1 59* 3 55	98	$3 05	386	$1 03	210	.84	64	$1 44

*Firemen ‡Males.

TABLE No. 19—CIGARS, CIGARETTES AND CHEROOTS—CONTINUED.

Plants Operating	Little Cigar Makers						Machine Operators				Machinists and Carpenters		Machine Helpers		Packers			
	Males Under 16	Males Over 16	Daily Pay	Females Under 16	Females Over 16	Daily Pay	Males	Daily Pay	Females	Daily Pay	Number	Daily Pay	Number	Daily Pay	Males	Daily Pay	Females	Daily Pay
41	29	55	$ 1 25	23	125	$ 1 15	97	$ 1 67	578	$ 1 13	4 51	$ 2 95* 3 05	11 71	$ 75‡ 96	3	$ 1 28	507	$ 1 50

Plants Operating	Rollers and Binders		Stampers		Paper Box Makers				Strippers						Watchmen		Hours of Labor		Average Number Days Operated
	Males	Daily Pay	Number	Daily Pay	Males	Daily Pay	Females	Daily Pay	Males Under 16	Males Over 16	Daily Pay	Females Under 16	Females Over 16	Daily Pay	Number	Daily Pay	Males	Females	
41	167	$ 1 02	72 19	$ 1 09‡ 1 29	51	$ 1 25	85	$ 1 13	5	127	$1 00	4	316	$ 90	8	$ 2 02	8-10	8-10	257

* Carpenters ‡ Females

Cotton Mills.

Eleven plants were in operation against nine for the year previous. The value of product showed an increase of $240,171.91, while the amount of wages paid decreased $6,272.18; capital invested increased $2,303,899.78. In consequence of short time in which four plants operated during the year—30 to 174 days—the average number of days worked was 205 as against 267 for the year previous; the larger mills worked the usual time. For wage changes see comparative statement.

COMPARISON.

	1909	1910
Value of product	$8,019,187 39	$8,265,359 30
Wages paid	1,485,194 08	1,478,921 90
Capital invested	8,307,000 00	10,610,899 78

Average Monthly Pay of Office Help.

Bookkeepers	106 08	100 94
Clerks	85 77	55 00
Managers	394 54	269 60
Salesmen	158 28	318 00
Stenographers	56 41	67 22

Average Daily Pay.

	Male.	Female.	Male.	Female.
Carders and pickers	$1 06	$ 90	$1 16	$1 03
Cloth hands	1 00	78	1 11	82
Dressers	1 08	83	1 22	92
General help	1 25	79	2 02	70
Machine hands	1 58	....	1 48	....
Slashers	1 05	....	1 05	....
Spinners	81	76	83	79
Spoolers	1 17	91	93	93
Stainers and dyers	1 00	....	1 04	....
Watchmen	1 00	....	1 00	....
Weavers	1 16	99	1 34	1 11
Winders and warpers	1 20	76	1 10	96
Yard hands	1 26	....	1 27	....

TABLE No. 20—COTTON MILLS.

Plants Operating	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help								
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
11	$8,265,359 30	$1,478,921 90	$10,610,899 78	23	$100 94	6	$55 00	25	$269 60	5	$318 00	6	$67 22

Plants Operating	Carders and Pickers						Cloth Hands				Dressers						General Help					
	Males Under 16	Males Over 16	Daily Pay	Females Under 16	Females Over 16	Daily Pay	Males	Daily Pay	Females	Daily Pay	Males Under 16	Males Over 16	Daily Pay	Females Under 16	Females Over 16	Daily Pay	Males Under 16	Males Over 16	Daily Pay	Females Under 16	Females Over 16	Daily Pay
11	10	736	$1 16	2	87	$1 03	196	$1 11	116	.82	.	134	$1 22	10	319	.92	11	202	$1 23	7	111	.70

TABLE No. 20—COTTON MILLS—CONTINUED.

Plants Operating	Machine Hands		Slashers		Spinners						Spoolers				Stainers and Dyers	
	Number	Daily Pay	Number	Daily Pay	Males Under 16	Males Over 16	Daily Pay	Females Under 16	Females Over 16	Daily Pay	Males Under 16	Males Over 16	Daily Pay	Females Under 16	Females Over 16	Daily Pay
11	184	$1 48	3	$1 05	305	376	.83	224	316	.79	1	6	.93	1	67	.93	142	$1 04

Plants Operating	Watchmen		Weavers						Warpers and Winders				Yard Hands		Hours of Labor	No. Days Operated
	Number	Daily Pay	Males Under 16	Males Over 16	Daily Pay	Females Under 16	Females Over 16	Daily Pay	Males	Daily Pay	Females	Daily Pay	Number	Daily Pay		
11	1	$1 00	17	1,374	$1 34	5	598	$1 11	4	$1 10	41	.96	48	$1 27	10	205

Excelsior.

Nine plants were in operation against eight for the previous year. Increases appear in product value, $17,997.23; in wages paid, $3,040.73, and in capital invested, $8,500.00. Slight changes appear in average daily wages. Hours of labor unchanged. The average number of days operated was 232 against 218 for the year previous.

COMPARISON.

	1909	1910
Value of product	$182,121 24	$200,118 47
Wages paid	45,780 80	48,821 53
Capital invested	121,500 00	130,000 00
Average Monthly Pay of Office Help.		
Bookkeepers	53 33	46 67
Managers	60 55	83 33
Average Daily Pay.		
Firemen	1 42	1 45
Foremen	2 44	2 16
Mill hands	1 21	1 29

TABLE No. 21.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help: Bookkeepers	Monthly Pay	Managers	Monthly Pay
9	$200,118 47	$48,821 53	$130,000 00	3	$ 46 67	4	$ 83 33

Plants Operated	Average Daily Pay: Firemen Number	Firemen Daily Pay	Foremen Number	Foremen Daily Pay	Mill Hands Number	Mill Hands Daily Pay	Hours of Labor	No. Days Operated
9	4	$ 1 45	6	$ 2 16	143	$ 1 29	10-12	232

Fish Oil and Fish Guano.

Nine plants were in operation against ten the year previous. There were increases over the preceding year of $341,541.29 in value of product, $25,139.18 in wages paid, and $54,900.00 in capital invested. Hours of labor unchanged. Average number of days operated, 205 against 183 for the year 1909.

COMPARISON.

	1909	1910
Value of product	$1,028,877 77	$1,370,419 06
Wages paid	344,145 72	369,284 90
Capital invested	837,300 00	892,200 00
Average Monthly Pay of Office Help.		
Bookkeepers	57 19	58 54
Clerks	40 00	46 66
Managers	91 61	146 94
Average Daily Pay.		
Captains	5 59	6 96
Cooks	1 95	1 99
Engineers	2 61	2 64
Firemen	1 17	1 36
Fishermen	1 26	1 26
Foremen	1 89	2 14
Laborers and general help	1 01	1 00
Mates	2 94	3 02
Pilots	2 38	2 42

TABLÆ No. 22—FISH OIL AND FISH GUANO.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help						Captains	
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Number	Daily Pay
9	$1,370,419 06	$369,284 90	$892,200 00	8	$58 54	3	$46 66	15	$146 94	24	$ 6 96

Plants Operated	Cooks		Engineers		Firemen		Fishermen		Foremen (Factory)		Labor and Gen'l Help		Mates		Pilots		Hours of Labor	Average No. of Days Operated
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay		
9	36	$ 1 99	67	$ 2 64	66	$ 1 36	538	$ 1 26	6	$ 2 14	573	$ 1 00	26	$ 3 02	37	$ 2 42	10-12	205

Flour and Grist Mills.

Three hundred and thirty-seven plants reported as against one hundred and sixty-two for the year previous; the additional mills reporting being chiefly small ones. Value of product increased $139,249.43, wages paid $32,555.66, and capital invested $1,629,879.72. Hours remained the same, the bulk of the mills running ten hours. The average number of days operated was 245 against 259 for the year previous.

COMPARISON.

	1909	1910
Value of product	$11,131,569 15	$11,270,818 58
Wages paid	295,809 88	328,365 54
Capital invested	2,991,856 01	4,621,735 73

Average Monthly Pay of Office Help.

Bookkeepers	56 15	55 35
Clerks	53 86	61 32
Managers	85 22	83 85
Salesmen	109 23	86 00
Stenographers	40 36	36 37

Average Daily Pay.

Coopers	1 48	1 55
Engineers	1 77	1 60
Firemen	1 32	1 13
General help	1 32	1 17
Millers	1 74	1 68
Miller's help	1 23	1 09
Millwrights	2 05	2 02
Packers	1 28	1 25
Sack sewers	1 22	1 01
Superintendents	5 24	2 59
Teamsters	1 11	1 09

TABLE No. 23—FLOUR AND GRIST MILLS.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
337	$11,270,818 58	$328,365 54	$4,621,735 73	41	$55 35	16	$61 31	52	$83 85	15	$86 00	16	$36 37

Plants Operated	Coopers		Engineers		Firemen		General Help		Millers		Millers' Help		Mill-wrights		Packers		Sack-Sewers		Superin-tendents		Team-sters		Hours of Labor	No. Days Operated
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Day	Number	Daily Pay		
337	42	$1 55	35	$1 60	26	$1 13	160	$1 17	271	$1 68	157	$1 09	15	$2 02	61	$1 25	10	$1 01	13	$2 59	100	$1 09	8–12	245

Furniture Factories.

Thirty-one plants were in operation against twenty-one for the year previous. Value of product increased $565,855.02, wages paid $103,772.95 and capital invested $243,554.61. Hours of labor unchanged. For wage changes see comparison. Average number of days worked, 244 against 274 for the year 1909.

COMPARISON.

	1909	1910
Value of product	$1,145,430 52	$1,711,285 54
Wages paid	310,165 44	413,938 39
Capital invested	664,644 59	908,199 20

Average Monthly Pay of Office Help.

Bookkeepers	68 75	65 69
Clerks	48 73	70 00
Managers	113 78	134 03
Salesmen	93 75	74 00
Stenographers	30 00	29 18

Average Daily Pay.

Cabinet makers	1 55	1 50
Engineers	1 79	1 67
Finishers	1 29	1 36
Foremen	2 75	2 88
General help (males)	1 42	1 24
General help (females)	....	1 04
Machine hands	1 41	1 51
Packers and labellers	1 38	1 33
Upholsterers	2 27	1 98
Watchmen	1 37	1 26

TABLE No. 24—FURNITURE FACTORIES

Plants Operating	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
31	$1,711,285 54	$413,938 39	$908,199 20	18	$65 69	6	$70 00	31	$134 03	5	$74 00	11	$29 18

Plants Operating	Cabinet Makers		Engineers		Finishers		Foremen		General Help				Machine Hands		Packers and Labelers		Upholsterers		Watchmen		Hours of Labor	No. Days Operated
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Males	Daily Pay	Females	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay		
31	202	$1 50	8	$1 67	109	$1 36	3	$2 88	367	$1 24	7	$1 04	391	$1 51	38	$1 33	25	$1 98	4	$1 26	9-10	244

Glass Works.

Six plants were in operation, the same as the year previous. Value of product increased $63,776.10 and wages paid $33,659.73; while, in consequence of reorganization, capital invested fell off $134,100.00. Hours of labor practically the same (see note to table). Average number of days operated 274 against 264 for the year previous.

COMPARISON.

	1909	1910
Value of product	$762,095 27	$825,871 37
Wages paid	338,802 11	372,461 84
Capital invested	524,900 00	390,800 00
Average Monthly Pay of Office Help.		
Bookkeepers	81 25	105 00
Clerks	59 16	47 14
Managers	212 50	183 33
Salesmen	118 75	124 16
Stenographers	55 00	43 75
Average Daily Pay.		
Blowers	5 34	5 58
Box makers	2 42	2 20
Drivers	1 25	1 65
Engineers and machinists	....	3 50
General help	2 30	1 18
Laborers	1 48	1 25
Lehr tenders	98	1 00
Packers	1 39	1 75
Tending boys	81	87

TABLE No. 25—GLASS WORKS.

Plants Operating	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
6	$ 825,871 37	$ 372,461 84	$ 390,800 00	7	$ 105 00	7	$ 47 14	6	$183 33	6	$ 124 16	6	$ 43 75

Plants Operating	Blowers		Box Makers		Drivers		Engineers and Machinists		Gen'l Help		Laborers		Lehr Tenders		Packers		Tending Boys'		Hours of Labor	No. Days Operated
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay		
6	223	$ 5 58	5	$ 2 20	2	$ 1 65	4	$ 3 50	234	$ 1 18	91	$ 1 25	6	$ 1 00	18	$1 75	90	$ 87	8-10†	274

† One plant worked 8 hours, one 8½ hours, three 9 hours, and one 10 hours.

Iron and Machine Works.

Seventy-seven reported in operation against sixty-five the year before. Value of product gives an increase of $9,195,122.38, wages paid an increase of $3,033,100.31, and capital invested an increase of $8,120,020.94. A distinct advance in this industry is noted and is a cause for gratification. The average number of days of operation was 282 against 289 for the year previous. Hours of labor were about the same (see note to table). For wage changes see comparative statement.

COMPARISON.

	1909	1910
Value of product	$14,948,150 27	$24,143,272 65
Wages paid	5,173,327 06	8,206,427 37
Capital invested	16,862,435 47	24,982,456 41

Average Monthly Pay of Office Help.

Bookkeepers	74 89	82 54
Clerks	56 76	41 56
Managers	160 48	160 37
Salesmen	116 46	140 21
Stenographers	50 22	59 45

Average Daily Wages.

Anglesmiths	2 76	2 86
Apprentices and messengers	1 00	1 25
Axle helpers	1 55	1 83
Axle makers and heavy forgers	3 36	3 34
Blacksmiths	2 83	2 91
Blacksmith's help	1 56	1 42
Boiler makers	2 67	2 94
Boiler maker's help	1 48	1 59
Carpenters and coopers	2 31	2 57
Coppersmiths	3 20	3 15
Draughtsmen	4 89	3 78
Drillers	1 74	2 15
Electricians	2 50	3 05
Engineers	2 50	2 52
Firemen	1 51	1 95
Fitters	2 40	2 30
Foremen	3 50	4 20
General help (skilled)	2 06	1 99
General help (unskilled)	1 33	1 43

Grinders and tool sharpeners	$2 45	$3 54
Hammersmiths	5 71	4 73
Heaters	2 47	4 26
Heater's help	1 99	2 01
Joiners	2 79	2 10
Lathemen	2 23	2 51
Machinists	2 67	2 91
Miscellaneous help	2 41	80
Moulders	2 71	2 78
Painters	2 49	2 76
Pattern makers	3 26	3 40
Plumbers and pipefitters	2 37	2 48
Puddlers	2 73	2 81
Puddler's help	1 64	1 67
Riveters and caulkers	2 10	2 53
Riggers	2 64	2 81
Rollers	3 60	5 58
Scrap heaters	3 51	3 90
Scrap helpers	1 82	2 17
Shearmen	1 52	1 70
Ship carpenters	2 75	2 76
Tracers	1 68	1 96
Watchmen	1 63	1 75
Yard fitters	....	2 96

TABLE No. 26—IRON AND MACHINE WORKS.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
77	$ 24,143,272 65	$ 8,206,427 37	$ 24,982,456 41	58	$ 82 54	229	$ 41 56	101	$ 160 37	22	$ 140 21	70	$ 59 45

Plants Operated	Anglesmiths		Apprentices and Messengers		Axle Helpers		Axle Makers and Heavy Forge's		Blacksmiths		Blacksmiths' Helpers		Boiler Makers		Boiler Makers' Help		Carpenters and Coopers	
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay
77	42	$ 2 86	202	$ 1 25	21	$ 1 83	6	$ 3 34	150	$ 2 91	162	$ 1 42	268	$ 2 94	459	$ 1 59	130	$ 2 57

Plants Operated	Coppersmiths		Draughtsmen		Drillers		Electricians		Engineers and Firemen		Fitters		Foremen		General Help			
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Skilled	Daily Pay	Unskilled	Daily Pay
77	55	$ 3 15	140	$ 3 78	181	$ 2 15	157	$ 3 05	64 245	$ 1 95* 2 52	169	$ 4 20	26	$ 2 30	1281	$ 1 99	4547	$ 1 43

* Firemen.

TABLE No. 26—IRON AND MACHINE WORKS—CONTINUED.

Plants Operated	Grinders and Tool Sharpeners		Hammer-smiths		Heaters		Heaters' Help		Joiners		Lathemen		Machinists		Miscella-neous Help		Moulders	
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay
77	31	$3 54	23	$4 73	15	$4 26	63	$2 01	152	$2 10	143	$2 51	963	291	24	$ 80	411	$2 78

Plants Operated	Painters		Patternmakers		Plumbers and Pipefitters		Puddlers		Puddlers' Help		Riggers		Riveters and Caulkers		Rollers	
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay
77	73	$2 76	178	$3 40	161	$2 48	43	$2 81	28	$1 67	37	$2 81	430	$2 53	9	$5 58

Plants Operated	Scrap Heaters		Scrap Helpers		Shearmen		Ship Carpenters		Tracers		Watchmen		Yard Fitters		Hours of Labor	No. Days Operated
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay		
77	8	$3 90	62	$2 17	49	$1 70	278	$2 76	47	$1 96	97	$1 75	57	$2 96	8-10*	282

*Fourteen plants worked 9 hours, sixty-two, 10 hours, and one 12 hours.

Knitting Mills.

The same number of plants were in operation as in the year previous. There was a falling off in value of product, $120,651.70, and in wages paid, $31,957.33, while capital invested showed an increase of $62,338.85. Hours of labor were practically unchanged. For wage changes see statement appended. Average number of days of operation 283 against 285 for the year previous.

COMPARISON.

	1909	1910
Value of product	$2,548,804 56	$2,428,152 86
Wages paid	554,867 58	522,910 25
Capital invested	367,090 18	429,428 73

Average Monthly Pay of Office Help.

Bookkeepers	83 23	74 10
Clerks	67 50	59 25
Managers	151 67	176 05
Salesmen	105 62	115 83
Stenographers	53 75	55 00

Average Daily Pay.

	Male.	Female.	Male.	Female.
Boarders	$1 15	$....	$1 38	$....
Bleachers	1 50	....	1 50	....
Braiders	....	25	....	25
Carders	1 46	....	1 43	....
Case makers	1 08	....	1 69	....
Cutters	1 33	85	1 34	85
Dyers	1 06	....	1 28	....
Embroiderers	....	1 00	....	1 05
Engineers	2 28	....	2 41	....
Finishers	1 11	1 00	1 02	84
Firemen	1 39	....	1 47	....
Folders	1 25	....	1 03	....
Foremen and overseers	2 87	1 42	2 80	....
General help	1 20	95	1 19	1 18
Hemmers	....	96	....	1 08
Inspectors	....	83	....	87
Knitters	1 05	1 03	1 33	93
Loom fixers	2 25	....	2 47	....
Loopers	1 23	....	....	1 23
Machinists	2 30	....	2 65	....

	Male.	Female.	Male.	Female.
Maters	$....	$ 98	$....	$ 90
Menders	....	87	....	85
Mule spinners	1 95	....	2 12	....
Operators (machine)	....	1 06	....	1 04
Packers	1 34	....	1 16	....
Pickers	1 15	....	1 19	....
Pressers	1 18	....	1 05	....
Spinners	1 20	....	81	....
Stampers	1 37	....	1 09	....
Teamsters	1 79	....	1 48	....
Tappers	75	75	1 13	85
Turners	....	61	....	55
Washers	1 27	....	1 20	....
Winders	1 31	....	1 26	....
Watchmen	1 44	....	1 35	....

TABLE No. 27—KNITTING MILLS.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
10	$2,428,152 86	$522,910 25	$429,428 73	10	$74 10	4	$59 25	10	$176 05	3	$115 83	4	$55 00

Plants Operated	Boarders		Bleachers		Braiders		Carders		Case Makers		Cutters				Dyers		Embroiderers		Engineers		Finishers			
	Number	Daily Pay	Number	Daily Pay	Females	Daily Pay	Number	Daily Pay	Number	Daily Pay	Males	Daily Pay	Females	Daily Pay	Number	Daily Pay	Females	Daily Pay	Number	Daily Pay	Males	Daily Pay	Females	Daily Pay
10	52	$1 38	2	$1 50	15	.25	30	$1 43	7	$1 69	37	$1 34	3	.85	16	$1 28	15	$1 05	9	$2 41	64	$1 02	229	.84

Plants Operated	Firemen		Folders		Foremen and Overseers		General Help				Hemmers		Inspectors.		Knitters						Loom Fixers	
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Males	Daily Pay	Females	Daily Pay	Females	Daily Pay	Females	Daily Pay	Males Under 16	Males Over 16	Daily Pay	Females Under 16	Females Over 16	Daily Pay	Number	Daily Pay
10	9	$1 47	24	$1 03	40	$2 80	56	$1 19	68	$1 18	7	$1 08	109	.87	16	102	$1 33	10	54	.93	7	$2 47

TABLE No. 27—KNITTING MILLS—CONTINUED.

Plants Operated	Loopers		Machinists		Maters		Menders		Mule Spinners		Operators (Machine)		Packers		Pickers		Pressers		Spinners	
	Females	Daily Pay	Number	Daily Pay	Females	Daily Pay	Females	Daily Pay	Number	Daily Pay	Females	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay
10	82	$1 23	13	$2 65	9	.90	38	.85	35	$2 12	466	$1 04	33	$1 16	16	$1 19	21	$1 05	13	.81

Plants Operated	Stampers		Teamsters		Tappers						Turners		Washers		Winders		Watchmen		Hours of Labor	Number Days Operated
	Number	Daily Pay	Number	Daily Pay	Males Under 16	Males Over 16	Females Under 16	Females Over 16	Daily Pay		Females	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay		
10	4	$ 1 09	8	$ 1 48	15	18	16	11	$	85	21	$ 55	14	$ 1 20	66	$ 1 26	7	$ 1 35	9½-10½	283

Overalls and Shirts.

Twenty-three plants were in operation against seventeen for the year previous. Value of product increased $371,857.42, wages paid $68,955.81 and capital invested $18,021.14. Hours of labor, eight to ten. For wage changes see comparative statement. Average number of days operated 230 against 280 for the year previous; this average reduction was the result of two new plants having operated nineteen and forty days, respectively.

COMPARISON.

	1909	1910
Value of product	$1,534,935 70	$1,906,793 12
Wages paid	279,220 38	348,176 19
Capital invested	646,375 09	664,396 23

Average Monthly Pay of Office Help.

Bookkeepers	60 24	65 92
Clerks	41 00	54 53
Managers	142 02	113 04
Salesmen	105 22	102 16
Stenographers	26 17	30 50

Average Daily Pay.

	Male.	Female.	Male.	Female.
Cutters	$2 30	$....	$2 26	$....
Engineers	2 50	....	1 25	....
General help	1 13	....	1 23	72
Folders and pressers	1 24	....	98	....
Machinists	2 19	....	2 63	....
Machine operators	....	1 04	2 12	1 07

TABLE No. 28 - OVERALLS AND SHIRTS.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help: Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
23	$ 1,906,793 12	$ 348,176 19	$ 664,396 23	18	$ 65 92	11	$ 54 53	1 23	$ 34 66* 113 04	32	$ 102 16	12	$ 30 50

Plants Operated	Cutters: Number	Cutters: Daily Pay	Engineers: Number	Engineers: Daily Pay	General Help: Males	General Help: Daily Pay	General Help: Females	General Help: Daily Pay	Folders and Pressers: Number	Folders and Pressers: Daily Pay	Machinists: Number	Machinists: Daily Pay	Machine Operators: Males	Machine Operators: Daily Pay	Machine Operators: Females	Machine Operators: Daily Pay	Hours of Labor	Average Number Days Operated
23	45	$ 2 26	1	$ 1 25	82	$ 1 23	131	$ 72	94	$ 98	3	$ 2 63	12	$ 2 12	998	$ 1 07	8-10†	230‡

* Females.

† Four plants work 8 hours, one 8½, four 9, three 9½, and eleven 10 hours.

‡ Two plants were in operation only 19 and 40 days respectively.

Paper and Pulp Mills.

Ten plants were in operation against nine the year previous. Product value increased $558,471.56, wages paid $100,968.62, and capital invested increased $962,144.67. There was no essential change in hours of labor. For wage changes see comparative statement. The average number of days worked was 291 against 275 for the preceding year. Business was reported good and the future outlook promising.

COMPARISON.

	1909	1910
Value of product	$4,330,077 48	$4,888,549 04
Wages paid	441,346 31	542,314 93
Capital invested	3,273,459 84	4,235,604 51

Average Monthly Pay of Office Help.

Bookkeepers	101 33	115 23
Clerks	69 38	80 21
Managers	205 85	203 27
Salesmen	175 00	175 00
Stenographers	52 00	57 50

Average Daily Pay.

Beaters	2 13	2 31
Beaters' help	1 35	1 29
Bleachers	1 72	2 03
Chip house	1 70	1 70
Cutter tenders (male)	1 74	2 24
Cutter tenders (female)	80	79
Digester house	2 06	2 05
Engineers	1 80	1 87
Finishers (male)	1 87	1 90
Finishers (female)	85	88
Firemen	1 79	1 92
Foremen	3 21	3 15
General help (male)	1 48	1 48
General help (female)	78	89
Laborers	1 41	1 35
Machinists	2 27	2 50
Machine-room hands	2 05	1 94
Millwrights and case makers	3 12	3 15
Watchmen	1 36	1 41

TABLE No. 29—PAPER AND PULP MILLS.

Plants Operating	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help: Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
10	$4,888,549 04	$542,314 93	$4,235,604 51	8	$115 23	14	$80 21	29	$203 27	4	$175 00	8	$57 50

Plants Operating	Beaters and Helpers: Beaters	Daily Pay	Helpers	Daily Pay	Bleachers: Number	Daily Pay	Chip House: Number	Daily Pay	Cutter Tenders: Number	Daily Pay	Digester House: Number	Daily Pay	Engineers: Number	Daily Pay	Finishers: Number	Daily Pay	Firemen: Number	Daily Pay
10	37	$2 31	25	$1 39	5	$2 03	42	$1 70	32 17	79‡ $2 24	45	$2 05	4	$1 87	17 34	88‡ $1 90	69	$1 92

Plants Operating	Foremen: Number	Daily Pay	General Help: Males	Daily Pay	Females	Daily Pay	Laborers: Number	Daily Pay	Machinists: Number	Daily Pay	Machine Room Hands: Number	Daily Pay	Millwrights and Case Makers: Number	Daily Pay	Watchmen: Number	Daily Pay	Hours of Labor	Average Number Days Operated
10	9	$3 15	330	$1 48	92	.89	136	$1 85	45	$2 50	180	$1 84	14	$3 15	5	$1 41	10-12	291

‡ Females

Paper and Tin Boxes.

Twelve plants were in operation against thirteen the year previous. Value of product exceeded the preceding year $81,859.90, wages paid $1,626.61 and capital invested $106,806.40. Hours of labor remained the same. For wage changes see comparative statement. Average number of days operated 277 against 260 for the previous year.

COMPARISON.

	1909	1910
Value of product	$1,781,556 38	$1,863,426 28
Wages paid	351,161 14	352,787 75
Capital invested	375,800 00	482,606 40

Average Monthly Pay of Office Help.

Bookkeepers	53 57	73 86
Clerks	95 00	89 06
Managers	132 13	174 11
Salesmen	89 17	84 24
Stenographers	41 83	39 16

Average Daily Pay.

	Male.	Female.	Male.	Female.
Box makers (round)	$....	$ 83	$....	$ 90
Box makers (square)	1 58	91	1 34	88
Carpenters	2 00	....	1 48	....
Die setters	2 00	....	2 26	....
Drivers	1 27	....	1 35	....
Engineers	3 75	....	3 88	....
Engravers	2 56	....	4 14	....
Firemen	1 75	....	1 81	....
Foremen	3 43	....	3 48	....
General help	1 14	72	1 26	88
Label printers	2 65	....	2 77	....
Lithographers and transferers	1 86	....	2 95	....
Machinists	3 08	....	3 21	....
Machine operators	1 44	1 14	1 65	1 21
Mixers	2 75	....	3 10	....
Pressmen	1 30	....	1 23	....
Shippers and packers	1 31	....	1 12	....
Tube rollers	....	1 15	....	1 20
Watchmen	1 62	....	1 42	....

TABLE No. 30—PAPER AND TIN BOXES.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help: Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
12	$ 1,863,426 28	$ 352,787 75	$ 482,606 40‡	7	$ 73 86	8	$ 89 06	13	$ 174 11	11	$ 84 24	6	$ 39 16

Plants Operated	Box Makers (Round): Females	Daily Pay	Box Makers (Square): Males	Daily Pay	Females	Daily Pay	Carpenters: Number	Daily Pay	Die Fitters: Number	Daily Pay	Drivers: Number	Daily Pay	Engineers: Number	Daily Pay	Engravers: Number	Daily Pay	Firemen: Number	Daily Pay	Foremen: Number	Daily Pay	General Help: Males	Daily Pay	Females	Daily Pay
12	135	$ 90	38	$1 34	250	$ 88	5	$1 48	8	$2 26	1	$1 35	2	$3 88	1	$4 14	1	$1 81	14	$3 48	236	$1 26	56	$ 88

Plants Operated	Label Printers: Number	Daily Pay	Lithographers and Transferers: Number	Daily Pay	Machinists: Number	Daily Pay	Machine Operators: Males	Daily Pay	Females	Daily Pay	Mixers: Number	Daily Pay	Pressmen: Number	Daily Pay	Shippers and Packers: Number	Daily Pay	Tube Rollers: Females	Daily Pay	Watchmen: Number	Daily Pay	Hours of Labor	Average Number Days Operated
12	8	$2 77	20	$2 95	18	$3 21	161	$1 65	54	$1 21	1	$3 10	86	$1 23	69	$1 12	8	$1 20	3	$1 42	9½-10½	277

‡ One of the larger plants is a branch of an alien corporation and its capital is not included.

Pickle Factories.

With the same number of plants in operation as in the year previous there was a falling off in product value, $5,185.68, and in wages paid, $1,325.44, while capital invested showed an increase of $4,006.32. Hours of labor unchanged. For wage changes see comparative statement. Average number of days operated 202 against 195 for the previous year.

COMPARISON.

	1909	1910
Value of product	$106,157 36	$100,971 68
Wages paid	12,893 52	11,568 08
Capital invested	36,633 68	40,640 00
Monthly Pay of Office Help.		
Managers	71 25	76 25
Average Daily Pay.		
General help (males)	1 46	1 37
General help (females)	91	1 07

TABLE No. 31—PICKLE FACTORIES.

Plants Operating	Value of Product	Wages Paid	Capital Invested	Managers		Average Daily Pay General Help				Hours of Labor		Number of Days Operated
				Number	Monthly Pay	Males	Daily Pay	Females	Daily Pay	Males	Females	
6	$100,971 68	$11,568 08	$40,640 00	4	$76 25	31	$1 37	9	$1 07	9-10	9-10	202

Printing, Engraving and Binding.

Ninety-two plants were in operation against eighty-seven the year previous. Business was reported good and the future outlook promising. Increases appear in value of product $185,546.74, in wages paid $22,313.33 and in capital invested $89,686.02. Hours of labor range from eight to ten, the bulk of the plants working nine hours. For wage changes see comparative statement below. The average number of days operated was 299 against 298 for the year previous.

COMPARISON.

	1909	1910
Value of product	$2,918,155 84	$3,103,702 58
Wages paid	812,610 60	834,923 93
Capital invested	1,755,567 96	1,845,253 98

Average Monthly Pay of Office Help.

Bookkeepers	67 81	71 69
Clerks	41 72	45 26
Managers	100 97	106 75
Salesmen	102 80	114 16
Stenographers	44 97	44 16

Average Daily Pay.

Artists	4 00	4 03
Apprentices (binders)	90	89
Apprentices (compositors)	1 33	1 01
Apprentices (pressmen)	99	1 12
Binders	2 69	2 91
Binders' help (male)	1 16	1 21
Binders' help (female)	99	91
Compositors	2 71	2 83
Compositors' help	1 18	1 07
Cutters	2 32	2 22
Devils	56	55
Embossers	1 00	1 67
Engineers	2 69	2 76
Engravers and transferers	3 57	3 73
Feeders (male)	1 27	1 44
Feeders (female)	1 19	1 13
Firemen	2 26	1 68

Folders (female)	$ 95	$1 00
Forwarders	2 53	2 55
Miscellaneous help (male)	1 13	1 22
Miscellaneous help (female)	86	92
Pressmen	2 49	2 69
Pressmens' help	1 06	1 33
Proof readers	1 83	2 07
Rulers	2 68	2 88
Stereotypers	2 09	2 06
Stone polishers	1 96	1 86

TABLE No. 32—PRINTING, ENGRAVING AND BINDING.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
92	$3,103,702 58	$ 831,923 13	$1,845,253 98	37	$ 71 69	49	$ 45 26	104	$ 106 75	42	$ 114 16	25	$ 44 16

Plants Operating	Artists		Apprentices						Binders and Help						Compositors and Help				Cutters		Devils	
			Binders		Compos.		Press.		Binders		Help				Compos		Help.					
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Males	Daily Pay	Females	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay
92	5	$4 03	62	.89	56	$1 01	41	$1 12	45	$2 91	11	$1 41	121	.91	292	$2 88	64	$1 07	35	$2 22	11	.55

TABLE No. 32—PRINTING, ENGRAVING AND BINDING.—CONTINUED.

Plants Operated	Engineers		Engravers and Transferers		Embossers		Feeders				Firemen		Folders		Forwarders	
	Number	Daily Pay	Number	Daily Pay	Females	Daily Pay	Males	Daily Pay	Females	Daily Pay	Number	Daily Pay	Females	Daily Pay	Number	Daily Pay
92	7	$2 76	35	$3 73	4	$1 67	137	$1 44	73	$1 13	9	$1 68	99	$ 1 00	18	$2 55

Plants Operating	Miscellaneous Help				Pressmen and Help				Proof Readers		Rulers		Stereotypers		Stone Polishers		Hours of Labor		Average Days Operated
	Males		Females		Pressmen		Help												
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Males	Females	
92	115	$ 1 22	88	$ 92	116	$ 2 69	20	$ 1 33	38	$ 2 07	22	$ 2 88	9	$ 2 06	4	$ 1 86	8-10	8-9	299

Silk Mills.

With six plants operating against four for the year previous, a falling off is shown in value of product, $295,184.19; in wages paid, $40,314.04, and in capital invested, $38,783.97. The conditions surrounding this industry in the State were not generally satisfactory for the calendar year 1910, and the outlook for 1911 is reported as not being bright. Hours remain the same. For wage changes see comparison. Average number of days worked was 251 against 293 for the year before; the lower average is accounted for by two of the plants having been in operation a comparatively short time.

COMPARISON.

	1909	1910
Value of product	$1,828,815 58	$1,533,631 39
Wages paid	232,506 44	192,192 40
Capital invested	735,143 73	696,359 76

Average Monthly Pay of Office Help.

Bookkeepers	62 16	84 86
Clerks	54 80	30 00
Managers	112 22	96 21
Stenographers	45 00	46 00

Average Daily Pay.

	Male.	Female.	Male.	Female.
Doffers	$1 00	$....	$1 00	$....
Doublers	....	90	....	75
Engineers	2 62	....	2 46	....
Firemen	1 66	....	1 52	....
Foremen	2 10	1 31	2 12	1 25
General help	1 43	1 02	1 60	79
Lacers	....	70	....	71
Loom fixers	2 98	....	3 14	....
Pickers	....	1 56	....	1 16
Reelers	1 47	78	....	70
Spinners	75	71	78	71
Twisters	1 87	88	1 47	91
Warpers	2 01	....	1 87	....
Weavers	1 75	1 75	2 00	1 75
Winders	2 33	86	69	80
Watchmen	1 45	....	1 66	....

TABLE No. 33—SILK MILLS.

Plants Operating	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help: Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Stenographers	Monthly Pay	Doffers: Males	Daily Pay	Doublers: Females	Daily Pay
6	$1,533,631, 39	$ 192,192 40	$ 696,359 76	7	$84 86	1	$30 00	8	$96 21	2	$46 00	6	$ 1 00	93	.75

Plants Operating	Engineers: Males	Daily Pay	Firemen: Males	Daily Pay	Foremen: Number	Daily Pay	General Help: Males	Daily Pay	Females	Daily Pay	Lacers: Females	Daily Pay	Loom Fixers: Males	Daily Pay	Pickers: Females	Daily Pay	Reelers: Females	Daily Pay
6	3	$2 46	3	$1 52	7 4	$1 25‡ 2 12	32	$1 60	36	.79	21	.71	7	$3 14	12	$1 16	58	.70

Plants Operating	Spinners: Males	Daily Pay	Females	Daily Pay	Twisters: Males	Daily Pay	Females	Daily Pay	Warpers: Males	Daily Pay	Weavers: Males	Daily Pay	Females	Daily Pay	Winders: Males	Daily Day	Females	Daily Pay	Watchmen: Males	Daily Pay	Hours of Labor	Average Number Days Operating
6	26	.78	15	.71	22	$1 47	41	.91	13	$1 87	91	$2 00	31	$1 75	7	.69	176	.80	4	$1 66	251	10

‡ Females.

Slate Quarries.

Six plants were in operation against five the year previous. In consequence of a protracted strike the product value fell off $46,194.60 and wages paid decreased $2,930.50—an adjustment of differences is reported as having been made. By increases in the capital of the older plants and installment of another plant the capital invested increased $463,350.00. A general advance in average wages is noted. Hours of labor unchanged. The average number of days worked was 220 against 276 for the year 1909.

COMPARISON.

	1909	1910
Value of product	$158,151 00	$111,956 14
Wages paid	99,348 89	96,418 39
Capital invested	183,200 00	646,550 00
Average Monthly Pay of Office Help.		
Bookkeepers	52 50	80 00
Managers	91 11	88 00
Salesmen	....	137 50
Average Daily Pay.		
Blacksmiths and machinists	2 17	2 51
Carpenters	....	2 16
Engineers and firemen	....	1 48
Foremen	....	2 66
General help	1 25	1 25
Laborers	1 21	1 28
Slate makers and quarrymen	2 25	2 32

TABLE No. 34.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help						Blacksmiths & Machinists	
				Bookkeepers	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Number	Daily Pay
6	$111,956 40	$ 96,418 39	$646,550 00	3	$80 00	10	$88 00	2	$137 50	8	$2 51

Plants Operated	Carpenters		Engineers & Firemen		Foremen		General Help		Laborers		Slate Makers and Quarrymen		Hours of Labor	Average Number Days Operated
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay		
6	3	$2 16	4	$1 48	6	$2 66	67	$1 25	166	$1 28	124	$2 32	10	220

Soapstone Quarries.

Five plants were in operation as against six for the year previous. Value of product increased $97,981.65, wages paid increased $39,123.27, and capital invested increased $43,000.00. Slight changes in average wages appear. Hours of labor unchanged. The average number of days operated was 302 against 253 for the year previous. Business outlook is reported as being fairly good.

COMPARISON.

	1909	1910
Value of product	$451,673 08	$549,654 73
Wages paid	230,038 69	269,161 96
Capital invested	927,000 00	970,000 00
Average Monthly Pay of Office Help.		
Bookkeepers	55 00	58 00
Clerks	44 50	41 25
Managers	92 00	108 03
Salesmen	35 39	62 31
Stenographers	41 25	32 67
Average Daily Pay.		
Blacksmiths	2 75	3 00
Carpenters	1 75	1 80
Engineers	1 78	1 77
Firemen	2 08	1 80
Foremen	2 82	2 75
General help	1 59	1 42
Laborers	1 25	1 30
Machinists	2 74	2 86
Mill hands	1 49	1 50
Quarrymen	1 50	1 50
Teamsters	1 50	1 50

TABLE No. 35—SOAPSTONE QUARRIES.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help: Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
5	$ 549,654 73	$ 269,161 96	$ 970,000 00	5	$58 00	8	$41 25	6	$108 03	7	$62 31	3	$32 67

Plants Operated	Blacksmiths: Number	Blacksmiths: Daily Pay	Carpenters: Number	Carpenters: Daily Pay	Engineers: Number	Engineers: Daily Pay	Firemen: Number	Firemen: Daily Pay	Foremen: Number	Foremen: Daily Pay	General Help: Number	General Help: Daily Pay	Laborers: Number	Laborers: Daily Pay	Machinists: Number	Machinists: Daily Pay	Mill Hands: Number	Mill Hands: Daily Pay	Quarrymen: Number	Quarrymen: Daily Pay	Teamsters: Number	Teamsters: Daily Pay	Hours of Labor	Number Days Operated
5	1	$3 00	2	$1 80	6	$1 77	1	$1 80	22	$2 75	20	$1 42	20	$1 30	7	$2 86	336	$1 50	146	$1 50	5	$1 50	10	302

Spokes, Hubs and Handles.

Fourteen plants were in operation against fifteen the year previous. Decreases appear in the value of product, $20,013.84, in wages paid, $5,570.16, and in capital invested, $57,656.49. Slight changes are shown in average wages (see comparison). Hours of labor unchanged—uniformly ten. The average number of days operated was 236 against 243 for the year 1909.

COMPARISON.

	1909	1910
Value of product	$422,652 58	$402,638 74
Wages paid	104,451 82	98,881 66
Capital invested	376,050 00	318,393 51
Average Monthly Pay of Office Help.		
Bookkeepers	71 67	93 75
Clerks	36 67	55 00
Managers	79 23	75 00
Stenographers	35 00	31 00
Average Daily Pay.		
Firemen	1 50	1 39
Foremen	2 50	2 75
General help	1 06	1 13
Inspectors	2 10	2 50
Laborers	1 23	1 17
Machine hands	1 36	1 48
Sawyers	1 42	1 35

TABLE No. 36—SPOKES, HUBS AND HANDLES.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help							
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Stenographers	Monthly Pay
14	$ 402,638 74	$ 98,881 66	$ 318,393 51	4	$ 93 75	2	$ 55 00	11	$ 75 00	5	$ 31 00

Plants Operated	Firemen		Foremen		Gen'l Help		Inspectors		Laborers		Machine Hands		Sawyers		Hours of Labor	Average Number Days Operated
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay		
14	4	$ 1 39	2	$ 2 75	95	$ 1 13	1	$ 2 50	50	$ 1 17	135	$ 1 48	30	$ 1 35	10	236

Staves, Heading and Cooperage.

Seventy-nine plants were in operation as against fifty-two for the year previous. Value of product showed an increase of $65,416.08, wages paid an increase of $97,699.40, and capital invested an increase of $20,578.87. A slight advance in average wages is noted, while hours of labor remained the same. The average number of days operated was 200 against 214 for 1909.

COMPARISON.

	1909	1910
Value of product	$1,063,043 41	$1,128,459 49
Wages paid	301,499 94	399,199 34
Capital invested	558,999 94	579,578 81

Average Monthly Pay of Office Help.

Bookkeepers	58 00	61 43
Clerks	36 25	75 00
Managers	68 21	35 59
Salesmen	125 00	47 50
Stenographers	30 00	32 50

Average Daily Pay.

Coopers	1 67	1 87
Drivers	1 18	1 19
Engineers	1 55	1 61
Firemen	1 28	1 28
Foremen	2 16	2 21
General help	77	97
Laborers	1 10	1 09
Sawyers	1 43	1 44
Watchmen	1 33	1 22

TABLE No. 37—STAVES, HEADING AND COOPERAGE

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
79	$1,128,459 49	$ 399,199 34	$ 579,578 81	7	$ 61 43	4	$ 75 00	48	$ 35 59	2	$ 47 50	2	$ 32 50

Plants Operated	Coopers		Drivers		Engineers		Firemen		Foremen		General Help		Laborers		Sawyers		Watchmen		Hours of Labor	Number Days Operated
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay		
79	278	$1 87	129	$1 19	30	$1 61	49	$1 28	39	$2 21	291	.97	680	$1 09	87	$1 44	23	$1 22	10	200

Stove Works.

The same number of plants were operating as in the year previous. Value of product showed a decrease of $100,741.84 and capital invested a decrease of $4,300.00, while wages paid increased $22,693.49. Hours of labor remained at ten, with the exception of one plant, a part of the force of which worked seven hours. For wage changes see comparative statement. The average number of days operated was 175 against 218 for the year previous. The falling off in this item was caused by two of the smaller plants working only sixty-six and one hundred days, respectively.

COMPARISON.

	1909	1910
Value of product	$663,166 20	$562,424 36
Wages paid	187,905 87	210,599 36
Capital invested	385,300 00	381,000 00

Average Monthly Pay of Office Help.

Bookkeepers	81 66	102 00
Clerks	65 00	68 63
Managers	216 39	227 18
Salesmen	129 17	118 75
Stenographers	43 00	50 00

Average Daily Pay.

Carpenters	2 12	2 17
Cupola hands	3 05	1 54
Engineers	1 87	2 00
Foremen	3 25	3 75
General help	1 59	1 39
Laborers	1 37	1 27
Moulders	3 40	3 69
Mounters	2 34	2 45
Nickel platers	3 00	3 00
Pattern makers and fitters	2 83	3 44
Sheet metal workers	1 80	1 91

TABLE No. 38—STOVE WORKS.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
5	$ 562,424 36	$ 210,599 36	$ 381,000 00	5	$ 102 00	11	$ 68 63	8	$ 227 81	8	$ 118 75	5	$ 50 00

Plants Operated	Carpenters		Cupola Hands		Engineers		Foremen		General Help		Laborers		Moulders		Mounters		Nickel Platers		Patern Makers and Fitters		Sheet Metal Workers		Hours of Labor	Average Number Days Operated
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay		
5	9	$2 17	4	$1 54	2	$2 00	2	$3 75	13	$1 39	61	$1 27	147	$3 69	41	$2 45	5	$3 00	9	$3 44	38	$1 91	7-10†	175‡

† One plant worked part of force 7 hours and a part 10 hours while the remaining four plants worked their entire force 10 hours.

‡ Two plants worked sixty-six and one hundred days, respectively, which accounts for the low average.

Tanneries.

Twenty-eight plants were in operation against twenty-four for the year previous; the added plants were small and had little effect on the exhibit. Value of product increased $1,197,419.55, wages paid increased $55,101.13, while capital invested, including surplus, was diminished $32,677.50. Hours of labor—eight to twelve—unchanged (see note to table). For wage changes see comparative statement. Average number of days worked 278 against 307 for the year previous.

COMPARISON.

	1909	1910
Value of product	$8,006,007 56	$9,203,427 11
Wages paid	588,675 31	643,776 44
Capital invested	3,274,990 50	3,242,313 00

Average Monthly Pay of Office Help.

Bookkeepers	70 54	78 20
Clerks	69 25	78 73
Managers	152 85	194 76
Salesmen	258 50	362 50
Stenographers	48 93	55 62

Average Daily Pay.

Bark grinders	1 28	1 30
Beamsmen	1 41	1 52
Carpenters	1 49	1 57
Curriers	1 40	1 71
Engineers	1 68	1 55
Firemen	1 49	1 39
Foremen	2 21	3 08
General help (males)	1 36	1 43
General help (females)	....	55
Grainers	1 40	1 57
Laborers	1 32	1 25
Liquor runners	1 51	1 55
Machinists	2 09	2 58
Trimmers	1 41	1 25
Watchmen	1 29	1 47

TABLE No. 39—TANNERIES.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help: Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
28	$9,203,427 11	$643,776 44	$3,242,313 00	17	$78 20	10	$78 73	27	$194 76	2	$362 50	4	$55 62

Plants Operated	Bark Grinders: Number	Daily Pay	Beamsmen: Number	Daily Pay	Carpenters: Number	Daily Pay	Curriers: Number	Daily Pay	Engineers: Number	Daily Pay	Firemen: Number	Daily Pay	Foremen: Number	Daily Pay	General Help: Number	Daily Pay
28	18	$1 30	162	$1 52	9	$1 57	11	$1 71	9	$1 55	14	$1 39	14	$3 08	30 1011	$ 55‡ 1 43

Plants Operated	Grainers: Number	Daily Pay	Laborers: Number	Daily Pay	Liquor Runners: Number	Daily Pay	Machinists: Number	Daily Pay	Trimmers: Number	Daily Pay	Watchmen: Number	Daily Pay	Hours of Labor	Average Number Days Operated
28	12	$1 57	232	$1 25	6	$1 55	3	$2 58	1	$1 25	4	$1 47	8-12§	278

‡ Females.

§ Two plants worked 8 hours, one 9½ hours, twenty-one 10 hours and four 10 to 12 hours.

Tobacco Manufacturers.

With the same number of plants in operation as in the year previous there is shown an increase in value of product, $919,997.65; in wages paid, $27,255.09, and in capital invested, $335,466.56. Hours of labor unchanged. For wage changes see comparative statement. Average number of days operated 221 against 244 for the preceding year.

COMPARISON.

	1909	1910
Value of product	$11,584,846 76	$12,504,844 41
Wages paid	983,762 33	1,011,017 42
Capital invested	2,394,779 00	2,730,245 66
Average Monthly Pay of Office Help.		
Bookkeepers	93 53	97 88
Clerks	65 03	55 93
Managers	138 18	134 60
Salesmen	124 82	114 74
Stenographers	51 55	53 32
Average Daily Pay.		
Branders	1 19	1 53
Box prizers	1 34	1 29
Casers and dryers	1 18	1 19
Coopers and carpenters	1 52	1 64
Dippers and cookers	1 05	1 17
Engineers and machinists	2 51	2 60
Firemen	1 56	1 48
Foremen	2 68	2 84
General help (males)	1 12	1 15
General help (females)	1 07	97
Gummers	1 31	1 50
Little cigar makers (males)	....	2 00
Little cigar makers (females)	....	1 00
Lump makers	1 55	1 04
Machine hands (smoking)	1 24	1 23
Machine hands (plug)	1 56	1 58
Nip wrappers	1 45	1 09

Pickers (fillers)	$ 77	$ 85
Pickers (wrappers)	84	87
Potters	1 42	1 42
Sackers	1 00	1 50
Shapers	1 63	1 67
Steamers	1 16	1 10
Stemmers (male)	65	72
Stemmers (female)	53	68
Taggers and stampers (male)	77	77
Taggers and stampers (female)	1 07	1 06
Teamsters	1 10	1 29
Tin washers	81	86
Watchmen	1 46	1 52
Weighers	65	74

TABLE No. 40—TOBACCO MANUFACTORIES.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
25	$ 12,504,844 41	$ 1,011,017 42	$ 2,730,245 66	27	$ 97 88	2 39	$ 30 34‡ 55 93	63	$ 134 60	216	$ 114 74	23	$ 53 32

Plants Operated	Branders		Box Prizers		Casers and Dryers		Coopers and Carpenters		Dippers and Cookers		Engineers and Machinists		Firemen		Foremen		General Help					Gummers	
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Males	Daily Pay	Females	Daily Pay	Number	Daily Pay
25	45	$1 53	68	$1 29	59	$1 19	28	$1 64	68	$1 17	19	$2 60	25	$1 48	102	$2 84	608	$1 15	297	$ 97	2	$1 50

‡ Females.

TABLE No. 40—TOBACCO MANUFACTORIES—CONTINUED.

Plants Operated	Little Cigar Makers		Lump Makers		Machine Hands (Smoking)		Machine Hands (Plug)		Nip Wrappers		Pickers (Fillers)		Pickers (Wrappers)		Potters		Packers		Shapers	
	Females	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay
25	2	$2 00*	279	$1 04	46	$1 23	130	$1 58	273	$1 09	167	$ 85	107	$ 87	61	$1 42	241	$1 50	114	$1 67
	40	1 00																		

Plants Operated	Steamers	Stemmers							Taggers and Stampers				Teamsters		Tin Washers		Watchmen		Weighers		Hours of Labor	Average Number Days Operated
	Number	Males Under 16		Male Over 16		Females Under 16		Females Over 16		Males Under 16		Males Over 16		Females Under 16		Females Over 16								
		Daily Pay		Daily Pay		Daily Pay		Daily Pay		Daily Pay		Daily Pay		Daily Pay		Daily Pay		Daily Pay		Daily Pay				
25	2	$1 10	108	$ 72	360	$ 62	767	$ 68	36		54	$ 77	. . .	254	$1 06	9	$1 29	24	$ 86	15	$1 52	95	$ 74	8-10	221

* Males.

Trunks and Bags.

The same number of plants were in operation as in the preceding year. Value of product showed an increase of $151,727.60, wages paid an increase of $28,852.80 and capital invested an increase of $13,089.72. A reduction in hours of labor occurred in one plant. For wage changes see comparative statement. Average number of days operated 299 against 291 for the year previous.

COMPARISON.

	1909	1910
Value of product	$2,264,921 91	$2,416,649 51
Wages paid	448,884 17	477,736 97
Capital invested	950,444 84	963,534 56

Average Monthly Pay of Office Help.

Bookkeepers	91 81	75 45
Clerks	57 77	60 59
Managers	147 22	93 33
Salesmen	107 22	111 82
Stenographers	56 84	48 38

Average Daily Pay.

Bag cutters	1 65	1 68
Bag makers (male)	1 49	1 39
Bag makers (female)	....	99
Bag sewers	1 79	1 31
Box makers	1 65	1 74
Box sawyers	1 98	1 67
Case finishers (male)	1 87	1 71
Case finishers (female)	1 10	1 21
Engineers	3 25	2 62
Firemen	1 42	1 54
Foremen	3 15	3 20
General help (male)	1 16	1 94
General help (female)	....	87
Saw mill hands	1 26	1 28
Suit case makers (male)	1 34	1 26
Suit case makers (female)	....	71
Teamsters	1 05	1 05
Trunk makers	1 44	1 44
Watchmen	1 17	1 68

TABLE No. 41—TRUNKS AND BAGS.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help									
				Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
6	$2,416,649 51	$477,736 97	$963,534 56	11	$75 45	34	$60 59	20	$93 33	54	$111 82	16	$48 38

Plants Operated	Bag Cutters		Bag Makers		Bag Sewers		Box Makers		Box Sawyers		Case Finishers				Engineers		Firemen	
	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Males	Daily Pay	Females	Daily Pay	Number	Daily Pay	Number	Daily Pay
6	37	$1 68	32 260	$ 99‡ 1 39	8	$1 31	47	$1 74	31	$1 67	31	$1 71	20	$1 21	2	$2 62	2	$1 54

Plants Operated	Foremen		General Help				Saw Mill Hands		Suit Case Makers		Teamsters		Trunk Makers		Watchmen		Hours		Average Number Days Operated
	Number	Daily Pay	Males	Daily Pay	Females	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Males	Females	
6	11	$3 20	176	$1 94	11	$ 87	87	$1 28	6 85	$ 71‡ 1 26	11	$1 05	472	$1 44	3	$1 68	7-10½	7-10	299

‡ Females.

Woodenware, Boxes, Baskets and Shooks.

Sixty-four plants were in operation against fifty-one the year previous. Product value increased $473,449.23, wages paid increased $252,973.28, and capital invested gave an increase of $879,531.13. Business was generally reported good with a fairly bright outlook. Hours of labor remained the same. For wage changes see comparative statement. The average number of days operated was 268 against 242 for the year previous.

COMPARISON.

	1909	1910
Value of product	$9,204,544 89	$9,677,994 12
Wages paid	1,969,303 90	2,222,277 18
Capital invested	7,205,572 89	8,085,103 97

Average Monthly Pay of Office Help.

Bookkeepers	83 88	85 64
Clerks	61 07	67 05
Managers	157 06	187 98
Salesmen	170 34	159 24
Stenographers	56 75	57 24

Average Daily Pay.

Basket and butterdish makers (male)	68	61
Basket and butterdish makers (female)	54	49
Blacksmiths	2 21	2 10
Box makers	1 21	1 17
Carpenters and coopers	2 67	1 68
Drivers	1 23	1 24
Engineers	2 18	2 49
Firemen	1 43	1 58
Foremen	2 52	2 41
General help (male)	1 15	96
General help (female)	84	66
Inspectors	1 78	1 46
Laborers	1 10	1 21
Machine hands	1 45	1 34
Machinists and filers	3 33	3 25
Mill hands	1 45	1 48
Millwrights	3 80	3 75
Sawyers	1 45	2 10
Watchmen	1 59	1 43

TABLE No. 42—WOODENWARE, BOXES, BASKETS AND SHOOKS.

Plants Operated	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help: Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers,	Monthly Pay
64	$9,677,994 12	$2,222,277 18	$8,085,103 97. 57		$85 64	41	$67 05	69	$187 98	25	$159 24	29	$57 24

Plants Operated	Basket and Butter Dish Makers: Males	Daily Pay	Females	Daily Pay	Blacksmiths: Number	Daily Pay	Box Makers: Number	Daily Pay	Carpenters and Coopers: Number	Daily Pay	Drivers: Number	Daily Pay	Engineers: Number	Daily Pay
64	9	$ 61	369	$ 49	18	$2 10	97	$1 17	192	$1 68	74	$1 24	31	$2 49

Plants Operated	Firemen: Number	Daily Pay	Foremen: Number	Daily Pay	General Help: Males	Daily Pay	Females	Daily Pay	Inspectors: Number	Daily Pay	Laborers: Number	Daily Pay	Machine Hands: Number	Daily Pay
64	55	$1 58	176	$2 41	848	$ 96	232	$ 66	30	$1 46	3539	$1 21	562	$1 34

Plants Operated	Machinists and Filers: Number	Daily Pay	Mill Hands: Number	Daily Pay	Millwrights: Number	Daily Pay	Sawyers: Number	Daily Pay	Watchmen: Number	Daily Pay	Hours of Labor	Average Number Days Operated
64	78	$3 25	818	$1 48	4	$3 75	119	$2 10	18	$1 43	9-10	268

Woollen Mills.

Fourteen plants were in operation, the same as the year previous. Conditions were not reported good; there was a falling off in value of product, $187,600.68, in wages paid, $45,202.37, and in capital and surplus invested, $73,963.30. Hours were about the same, only two plants working any part of their force less than ten hours. For wage changes see comparative statement. Average number of days operated 205 against 240 for the year before.

COMPARISON.

	1909	1910
Vale of product	$1,007,824 96	$820,224 28
Wages paid	192,348 70	147,146 33
Capital invested	693,348 60	619,385 30

Average Monthly Pay of Office Help.

Bookkeepers	55 83	74 44
Clerks	42 86	49 46
Managers	109 61	110 79
Salesmen	53 75	100 00
Stenographers	....	63 79

Average Daily Pay.

Burlers (female)	73	1 00
Carders (male)	1 34	1 36
Carders (female)	51	83
Carpenters	1 61	1 97
Drawers in (female)	1 16	75
Dyers	1 50	1 40
Engineers and firemen	1 82	1 32
Finishers (male)	1 39	1 56
Finishers (female)	75	74
Foremen	3 08	2 14
Fullers	1 37	1 00
General help (male)	1 05	1 18
General help (female)	1 00	70
Loom fixers	2 12	1 44
Pickers	1 20	1 09
Shippers	2 25	2 25

Sorters	$1 24	$1 54
Spinners (male)	1 07	1 23
Spinners (female)	50	1 20
Spoolers (female)	69	79
Teamsters	99	1 06
Warpers	1 29	1 25
Weavers (male)	1 37	1 56
Weavers (female)	1 38	1 11
Watchmen	1 26	1 25

TABLE No. 43—WOOLLEN MILLS.

Plants Operating	Value of Product	Wages Paid	Capital Invested	Average Monthly Pay of Office Help: Bookkeepers	Monthly Pay	Clerks	Monthly Pay	Managers	Monthly Pay	Salesmen	Monthly Pay	Stenographers	Monthly Pay
14	$820,224 28	$147,146 33	$619,385 30	3	$74 44	5	$49 46	11	$110 79	1	$100 00	4	$63 79

Plants Operating	Burlers: Females	Daily Pay	Carders: Males	Daily Pay	Carpenters: Number	Daily Pay	Drawers In: Females	Daily Pay	Dyers: Number	Daily Pay	Engineers and Firemen: Number	Daily Pay	Finishers: Number	Daily Pay	Foremen: Number	Daily Pay	Fullers: Number	Daily Pay	General Help: Males	Daily Pay	Females	Daily Pay	Loom Fixers: Number	Daily Pay
14	1	$1 00	4 33	$ 83‡ 1 36	2	$1 97	2	$ 75	14	$1 40	13	$1 32	31 36	$ 74‡ 1 56	4	$2 14	4	$1 00	37	$1 18	15	$ 70	4	$1 44

Plants Operating	Pickers: Number	Daily Pay	Shippers: Number	Daily Pay	Sorters: Number	Daily Pay	Spinners: Males	Daily Pay	Females	Spoolers: Daily Pay	Females	Teamsters: Daily Pay	Number	Warpers: Number	Daily Pay	Weavers: Males	Daily Pay	Females	Watchmen: Daily Pay	Number	Hours of Labor: Daily Pay	Males	Females	Average Number Days Operated
14	7	$1 09	1	$2 25	9	$1 54	56	$1 23	37	$1 20	14	$ 79	3	$1 06	2	$1 25	87	$1 56	85	$1 11	2	$1 25	8½-10½	8½-10	205

‡ Females.

Coal and Coke Production.

The reports from the coal mines in the State show an increase in output of 1,378,519 tons of 2,000 pounds and an increase in the value at mines of $1,933,147.90.

The anthracite output fell off 7,339 tons and in value $6,940.75, while bituminous showed an increase in output of 1,385,858 tons and an increase in value at mines of $1,940,088.45. There were 8,703 persons employed in 1910 against 7,710 in the year previous. The increased output for Virginia is attributed to an increased demand from the middle West which gave West Virginia a profitable market there and diverted her shipments from the seaboard to that section, which left an increased demand from the ports for coal mined in Virginia, a circumstance of which the Virginia miners were quick to take advantage. Hours of labor range from eight to ten, chiefly ten. For changes in average wages see appended comparative statement. The average number of days operated was 249 against 227 for the year previous.

COMPARISON.

	1909	1910
Tons of anthracite mined	35,676	28,337
Value of anthracite	$ 55,427 70	$ 48,486 95
Tons of bituminous mined	4,692,870	6,078,728
Value of bituminous	$4,172,419 91	$6,112,508 36

Accidents.

Killed	38	52
Injured	276	455

Average Daily Pay.

Blacksmiths	2 50	2 30
Car shifters	1 57	1 96
Chargers	1 78	1 71
Drawers	2 04	1 71
Engineers	2 05	2 17
Electricians	2 50	2 81
Elevator men	1 65	1 65
Firemen	1 79	1 80
Foremen	2 94	3 49

Laborers and general help	$1 52	$1 66
Levelers	2 29	1 38
Loaders	2 31	1 91
Machine cutters	2 67	2 67
Machinists	2 47	2 69
Machine miners	2 50	2 42
Pick miners	2 58	2 40
Pump men	1 61	1 65
Sealers and weighers	1 75	1 90
Timbermen	1 90	1 76
Yard and track men	2 27	1 82

TABLE No. 44—COAL AND COKE PRODUCTION.

Output for the year 1910 (in tons of 2000 lbs.)

Bituminous				Anthracite					
Lump	Mine Run	Slack	Total Tons	Egg	Nut	Pea	Slack	Total Tons	Grand Total
824,093	5,190,781	63,854	6,078,728	8,288	1,572	14,442	4,035	28,337	6,107,065

HOW MINED, COST OF MINING, AND VALUE PER TON AT MINE.

Anthracite

Mined By Hand	Cost Per Ton	Tons Egg	Value Per Ton	Tons Nut	Value Per Ton	Tons Pea	Value Per Ton	Tons Slack	Value Per Ton	Total Tons	Average Value	Total Value
28,337	$ .839	8,288	$ 3.16	1,572	$2 63	14,442	$1 07	4,035	$ .629	28,337	$1 71	$48,486 95

Bituminous

Mined by Hand	Mined By Machinery	Cost Per Ton By Hand	Cost Per Ton By Machinery	Average Value Per Ton At Mine						Number Tons Made into Coke	Average Value of Coke Per Ton at Mines
				Lump	Mine Run	Slack	Total Tons	Average Value	Total Value		
3,725,876	2,352,852	$ .4086	$ .3493	$ 1.587	$ .911	$ .593	6,078,728	$ 1.005	$6,112,508 36	2,130,300	$ 1.795

DISTRIBUTION OF PRODUCT

Shipped	Sold to Railroads	Local Trade	Made into Coke	Consumed	Total Tons
3,128,143	672,586	41,428	2,130,300	134,608	6,107,065

EMPLOYEES AND AVERAGE DAILY WAGES.

Blacksmith		Car Shifters		Chargers		Drawers		Engineers		Electricians		Elevator Men		Firemen		Foremen		Laborers and Gen'l Help	
Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay
78	$2 30	76	$1 96	33	$1 71	615	$1 71	86	$2 17	61	$2 81	92	$1 65	107	$1 80	162	$3 49	1647	$1 66

Levellers		Loaders		Machine Cutters		Machinists		Machine Miners		Pick Miners		Pump Men		Sealers and Weighers		Timbermen		Yard and Track		Hours of Labor	Average Number Days Operated
Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay	Number	Daily Day	Number	Daily Pay	Number	Daily Pay	Number	Daily Pay		
56	$1 38	1269	$1 91	250	$2 67	89	$2 69	393	$2 42	2394	$2 40	108	$1 65	24	$1 90	303	$1 76	866	$1 82	8-10	249

Wages of Railway Employees and Accidents Occurring in the Year 1910.

By courtesy of the Corporation Commission their tables are incorporated in this report to meet a general demand for the information contained therein.

TABLE No. 45—AVERAGE DAILY PAY OF EMPLOYEES OF STEAM RAILROADS IN VIRGINIA, 1910.

Number	NAME OF COMPANY.	General Officers	Other Officers	General Office Clerks	Station Agents	Other Stationmen	Enginemen	Firemen	Conductors	Other Trainmen	Machinists	Carpenters	Other Shopmen	Section Foremen	Other Trackmen	Number
1	Atlantic Coast Line R. R. Co.	$ 5 48	$ 9 44	$ 3 46	$ 2 67	$ 1 50	$ 4 57	$ 1 41	$ 3 42	$ 1 68	$ 3 19	$ 2 30	$ 1 50	$ 2 19	$ 1 06	1
2	aBig Sandy and Cumberland R. R. Co.	. . .	3 85	50	91	. . .	2 90	1 80	2 80	1 50	2 00	. . .	. . .	2 40	1 35	2
3	Big Stone Gap and Powell's Valley Ry. Co.	. . .	. . .	1 48	. . .	. . .	1 97	1 32	1 64	1 41	. . .	. . .	. . .	1 15	1 10	3
4	Big Stony Ry. Co.	. . .	. . .	. . .	1 86	. . .	4 45	2 25	3 28	2 19	. . .	. . .	. . .	1 86	1 37	4
5	aBlackstone and Lunenburg R. R. Co.	. . .	. . .	. . .	. . .	1 67	4 40	2 41	3 90	2 30	. . .	. . .	. . .	1 93	1 40	5
6	Carolina, Clinchfield and Ohio Ry.	22 19	8 74	3 18	1 71	82	3 90	2 22	3 41	2 41	2 88	2 62	2 17	1 82	1 11	6
7	Chesapeake and Ohio Ry. Co., The	22 73	6 73	2 00	1 98	1 50	4 82	2 81	3 21	2 18	2 50	2 56	2 36	1 86	4 33	7
8	Chesapeake Western Ry.	6 46	2 79	1 36	87	33	3 08	1 70	2 64	1 60	2 88	1 39	1 27	1 18	1 10	8
9	Cumberland Valley and Martinsburg R. R Co.	05	. . .	. . .	2 82	1 07	4 72	2 42	3 91	2 23	. . .	. . .	. . .	1 75	1 48	9
10	Danville and Western Ry. Co.	4 17	3 33	1 60	1 25	1 22	3 24	1 62	3 00	1 53	1 95	1 91	1 32	1 53	1 00	10
11	Delaware, Maryland and Virginia R. R. Co.	. . .	. . .	. . .	. . .	2 03	1 61	. . .	. . .	. . .	. . .	2 75	. . .	1 81	1 43	11
12	Interstate R. R. Co.	2 93	3 78	2 21	1 10	2 00	3 31	2 00	3 08	2 00	3 00	. . .	1 75	1 61	1 25	12
13	Laurel Ry. Co.	4 81	. . .	1 64	1 83	. . .	2 80	2 00	2 20	1 38	3 25	. . .	1 85	1 75	1 15	13
14	Louisville and Nashville R. R. Co.	. . .	1 60	. . .	2 06	1 95	4 59	2 56	4 17	2 75	. . .	2 08	. . .	2 07	1 21	14
15	Marion and Rye Valley R. R. Co.	3 29	. . .	. . .	1 07	2 47	3 00	1 85	2 00	1 50	. . .	. . .	1 86	1 53	1 17	15
16	Mount Airy and Eastern Ry. Co.	4 79	. . .	1 31	. . .	. . .	2 24	1 15	1 53	1 10	. . .	. . .	1 60	1 47	91	16
17	Nelson and Albemarle Ry. Co.	4 31	. . .	. . .	1 67	. . .	3 39	2 95	2 57	1 30	3 02	1 75	2 00	1 95	1 12	17
18	New River, Holston and Western R. R. Co.	. . .	4 92	1 00	. . .	. . .	2 60	1 60	2 00	1 20	. . .	. . .	. . .	2 20	1 37	18
19	New York, Philadelphia and Norfolk R. R. Co.	9 57	18 15	2 28	1 90	1 65	5 20	2 88	4 11	2 72	2 99	2 48	1 87	1 95	1 23	19
20	Norfolk and Portsmouth Belt Line R. R. Co.	2 05	3 09	2 00	. . .	. . .	4 09	2 06	3 25	1 85	2 77	2 18	. . .	2 23	1 38	20
21	bNorfolk Southern R. R. Co.	13 18	5 02	2 01	1 42	1 61	4 04	2 16	3 04	1 77	3 19	2 21	1 83	1 89	1 06	21
22	dNorfolk and Southern Ry. Co.	15 86	4 41	2 13	1 37	1 48	3 67	1 87	3 04	1 63	2 96	2 03	1 79	1 73	1 03	22
23	Norfolk and Western Ry. Co.	36 62	11 47	2 51	2 44	1 48	4 41	2 44	3 40	2 02	3 73	2 71	2 14	2 03	1 55	23
24	aPocahontas and Western R. R. Co.	. . .	. . .	. . .	. . .	. . .	4 40	2 39	3 85	2 03	. . .	. . .	. . .	. . .	1 45	24
25	Potomac, Fredericksburg and Piedmont R. R. Co.	5 40	. . .	86	1 24	1 73	2 16	1 21	1 96	1 21	2 35	1 95	1 30	1 58	1 21	25
26	Richmond, Fredericksburg and Potomac R. R. Co.	14 80	6 09	2 40	2 38	1 60	5 23	3 07	3 92	2 58	3 45	2 47	2 26	2 06	1 33	26
27	Roaring Fork R. R. Co.	54	. . .	. . .	20	. . .	2 53	1 42	1 50	1 35	40	2 41	. . .	. . .	1 26	27
28	Rosslyn Connecting R. R. Co.	. . .	. . .	. . .	6 77	2 08	4 10	2 60	3 80	3 14	2 82	2 58	. . .	3 02	1 60	28
29	Seaboard Air Line Ry.	18 08	7 75	2 30	1 83	1 50	5 14	2 08	3 84	1 59	3 07	2 63	2 15	1 72	1 08	29
30	Southern Ry. Co.	. . .	3 08	. . .	1 50	1 40	4 33	2 09	3 35	1 70	3 00	1 85	1 70	1 56	1 07	30
31	Surry, Sussex and Southampton Ry. Co.	12 50	. . .	2 50	1 65	1 20	3 00	1 70	2 57	1 30	2 45	2 00	1 40	1 70	1 00	31
32	Tidewater and Western R. R. Co.	5 37	3 60	1 47	1 24	1 36	2 75	1 25	1 77	1 00	2 29	1 90	1 78	1 47	92	32
33	Valley Railroad Company of Virginia.	. . .	5 56	. . .	1 35	1 15	4 17	2 42	3 95	2 44	2 89	2 05	1 99	1 88	1 27	33

34	gVirginia Air Line Ry. Co.	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	34
35	Virginia Anthracite Coal and Ry Co.	3 28	. . .	1 31	1 47	90	2 84	1 65	2 19	1 74	2 26	2 15	. . .	1 64	1 35			35
36	Virginia-Carolina Ry. Co.	8 61	3 29	1 65	90	. . .	2 83	1 63	2 76	1 49	. . .	1 34	1 99	1 39	1 10			36
37	hVirginia-Carolina and Southern Ry. Co.	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .			37
38	Virginia and Kentucky Ry. Co.	2 46	. . .	. . .	2 46	1 65	2 50	1 26	2 46	1 42	. . .	. . .	. . .	1 65	1 25			38
39	Virginia Southern R. R. Co.	82	. . .	. . .	1 05	. . .	3 00	1 85	2 00	1 50	. . .	. . .	. . .	1 53	1 16			39
40	Virginia and Southwestern Ry. Co.	6 25	4 14	1 92	1 82	1 53	4 41	2 36	3 65	1 86	3 23	1 93	1 64	1 69	1 09			40
41	Virginian Ry. Co., The	16 40	12 97	1 81	2 17	1 60	4 71	2 64	3 68	2 11	3 06	2 52	2 07	1 83	1 19			41
42	nVirginian Terminal Ry. Co., The	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .			42
43	Washington Southern Ry. Co.	14 80	5 19	2 66	2 92	1 80	4 77	2 61	3 68	2 46	2 94	2 28	1 97	1 99	1 18			43
44	Winchester and Potomac R. R. Co.	. . .	5 56	. . .	1 19	1 46	4 28	2 60	3 46	2 54	. . .	1 98	. . .	1 86	1 27			44
45	Winchester and Strasburg R. R. Co.	. . .	5 56	. . .	1 19	1 34	4 32	2 63	3 42	2 58	. . .	2 01	2 05	1 92	1 27			45
46	Wise Terminal Co.	. . .	3 29	. . .	. . .	. . .	2 21	1 88	2 78	1 72	. . .	. . .	. . .	2 05	1 32			46
	Total	$11 37	$ 5 64	$ 2 33	$ 1 91	$ 1 54	$ 4 47	$ 2 40	$ 3 38	$ 2 04	$ 2 99	$ 2 42	$ 2 05	$ 1 83	$ 1 30			

aFor the period of eight months ending February 28, 1910, on which date consolidated with Norfolk and Western Railway Company.
bFor the period of two months ending June 30, 1910. Name changed from Norfolk and Southern Ry. Co.
dFor the period of ten months ending April 30, 1910. Name changed to Norfolk Southern R. R. Co.
gIncluded with The Chesapeake and Ohio Railway Company.
hIncluded with Virginia-Carolina Ry Co
nIncluded with The Virginian Railway Co

AVERAGE DAILY WAGES PAID EMPLOYEES OF STEAM RAILROADS IN VIRGINIA—1910—CONTINUED.

Number	NAME OF COMPANY.	Switchmen, Flagmen and Watchmen	Telegraph Operators and Despatchers	Employees—Floating Equipment	Other Employees and Laborers	Total (including "General Officers")—Virginia	Less "General Officers"	Total (Excluding "General Officers")—Virginia	Distribution of Foregoing: Maintenance of Way and Structures	Maintenance of Equipment	Traffic Expenses	Transportation Expenses	General Expenses	Outside Operation	Total (including "General Officers")—Entire Line	Number
1	Atlantic Coast Line R. R. Co.	$ 82	$2 14	$1 74	$2 00	$1 78	$5 48	$1 78	$1 42	$1 78	$2 81	$1 81	$9 98	. . .	$1 80	1
2	Big Sandy and Cumberland R. R. Co.	. . .	. . .	. . .	. . .	1 91	. . .	1 91	1 56	. . .	. . .	2 05	. . .	$2 39	1 76	2
3	Big Stone Gap and Powell's Valley Ry. Co.	. . .	. . .	. . .	. . .	1 43	. . .	1 43	1 12	. . .	. . .	1 59	1 48	. . .	1 43	3
4	Big Stony Ry. Co.	. . .	. . .	. . .	. . .	1 66	. . .	1 66	1 45	. . .	. . .	2 67	. . .	. . .	1 74	4
5	aBlackstone and Lunenburg R. R. Co.	. . .	. . .	. . .	. . .	1 90	. . .	1 90	1 51	. . .	. . .	2 36	. . .	. . .	1 90	5
6	Carolina, Clinchfield and Ohio Ry.	. . .	2 26	. . .	1 60	2 04	22 19	1 92	1 21	2 31	4 13	2 60	5 88	. . .	2 16	6
7	Chesapeake and Ohio Ry. Co. The	1 30	2 46	1 98	1 61	2 13	22 73	2 11	1 58	2 09	3 38	2 32	5 08	1 93	2 16	7
8	Chesapeake Western Ry.	66	91	. . .	33	1 52	6 46	1 27	1 20	1 26	3 23	1 42	3 14	. . .	1 27	8
9	Cumberland Valley and Martinsburg R. R. Co.	1 15	2 43	. . .	. . .	1 53	05	1 74	1 53	. . .	. . .	1 94	05	. . .	2 52	9
10	Danville and Western Ry. Co.	1 21	1 03	. . .	1 00	1 49	4 17	1 42	1 15	1 61	1 24	1 78	2 77	. . .	1 49	10
11	Delaware, Maryland and Virginia R. R. Co.	. . .	. . .	1 99	1 63	1 84	. . .	1 84	2 27	. . .	. . .	1 80	. . .	. . .	2 02	11
12	Interstate R. R. Co.	1 25	2 50	. . .	2 00	1 96	2 93	1 88	1 33	1 90	. . .	2 11	2 67	. . .	1 96	12
13	Laurel Ry. Co.	1 60	. . .	. . .	. . .	1 81	4 81	1 77	1 25	2 11	. . .	1 91	3 22	. . .	1 74	13
14	Louisville and Nashville R. R. Co.	1 22	1 99	. . .	1 73	2 21	. . .	2 21	1 53	1 25	. . .	2 96	1 60	. . .	2 11	14
15	Marion and Rye Valley Ry. Co.	2 00	. . .	. . .	20	1 56	3 29	1 51	1 23	1 86	. . .	1 87	1 74	. . .	1 56	15
16	Mount Airy and Eastern Ry. Co.	75	. . .	. . .	1 04	1 43	4 79	1 22	1 00	1 60	. . .	1 27	3 01	. . .	1 43	16
17	Nelson and Albemarle Ry. Co.	. . .	. . .	. . .	. . .	2 03	4 31	1 92	1 34	2 32	. . .	2 23	4 31	. . .	2 03	17
18	New River, Holston and Western R. R. Co.	. . .	. . .	. . .	13 73	2 67	. . .	2 67	2 70	. . .	. . .	1 85	5 50	. . .	2 67	18
19	New York, Philadelphia and Norfolk R. R. Co.	1 19	2 13	1 42	2 11	1 89	9 57	1 87	1 45	2 01	2 70	1 89	2 85	. . .	1 95	19
20	Norfolk and Portsmouth Belt Line R. R. Co.	1 84	4 45	. . .	2 06	2 18	2 05	2 18	1 48	2 60	. . .	2 55	2 01	. . .	2 18	20
21	bNorfolk Southern R. R. Co.	1 18	2 61	3 27	1 51	1 87	13 18	1 80	1 37	2 04	2 84	1 91	3 25	. . .	1 85	21
22	dNorfolk and Southern Ry. Co.	1 14	2 53	1 52	1 54	1 83	15 86	1 73	1 33	1 99	2 90	1 80	3 80	. . .	1 72	22
23	Norfolk and Western Ry. Co.	1 47	2 21	. . .	2 07	2 29	36 62	2 27	1 74	2 35	3 80	2 50	3 29	2 62	2 27	23
24	aPocahontas and Western R. R. Co.	. . .	. . .	. . .	. . .	1 82	. . .	1 82	1 45	. . .	. . .	2 87	. . .	. . .	1 82	24
25	Potomac, Fredericksburg and Piedmont R. R. Co.	1 23	. . .	. . .	1 21	1 67	5 40	1 39	1 26	1 86	. . .	1 43	5 40	. . .	1 67	25
26	Richmond, Fredericksburg and Potomac R. R. Co.	1 33	2 05	. . .	1 62	2 14	14 80	2 11	1 59	2 15	3 48	2 40	3 59	. . .	2 14	26
27	Roaring Fork R. R. Co.	. . .	. . .	. . .	. . .	1 09	54	1 31	1 97	59	. . .	1 25	42	. . .	1 09	27
28	Rosslyn Connecting R. R. Co.	. . .	2 04	. . .	1 63	2 31	. . .	2 31	1 73	2 76	. . .	2 47	. . .	. . .	2 31	28
29	Seaboard Air Line Ry.	1 20	1 94	2 08	1 62	1 85	18 08	1 82	1 17	2 43	3 24	1 93	2 61	1 36	1 85	29
30	Southern Ry. Co.	1 61	1 93	2 00	1 35	1 75	. . .	1 75	1 30	1 98	1 18	1 95	. . .	1 40	1 89	30
31	Surry, Sussex and Southampton Ry. Co.	1 50	. . .	. . .	1 20	1 68	12 50	1 53	1 15	1 95	. . .	1 74	7 50	. . .	1 68	31
32	Tidewater and Western R. R. Co.	85	2 49	. . .	94	1 55	5 37	1 37	1 13	2 01	3 46	1 45	3 70	. . .	1 55	32
33	Valley Railroad Company of Virginia	1 22	2 05	. . .	1 41	1 84	. . .	1 84	1 53	1 69	. . .	2 02	. . .	. . .	1 84	33

34	gVirginia Air Line Ry. Co.	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	34
35	Virginia Anthracite Coal and Ry. Co.	1 25	. . .	. . .	. . .	1 61	3 28	1 52	1 42	2 26	. . .	1 60	2 30	. . .	. . .	1 61		35
36	Virginia-Carolina Ry. Co.	1 32	67	. . .	. . .	1 93	8 61	1 35	1 15	1 99	. . .	1 52	6 29	. . .	. . .	1 93		36
37	hVirginia-Carolina and Southern Railway Company.	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .		37
38	Virginia and Kentucky Ry. Co.	99	. . .	. . .	. . .	1 84	2 46	1 79	1 40	. . .	. . .	1 89	2 46	. . .	. . .	1 84		38
39	Virginia Southern R. R. Co.	55	. . .	. . .	. . .	1 34	82	1 37	1 24	. . .	. . .	1 50	82	. . .	. . .	1 94		39
40	Virginia and Southwestern Ry. Co.	. . .	2 62	. . .	1 78	2 07	6 25	2 02	1 58	1 81	2 70	2 52	2 68	. . .	. . .	1 97		40
41	Virginian Ry. Co., The	. . .	2 67	. . .	1 68	2 09	16 40	1 91	1 30	2 58	3 23	2 73	2 33	4 25	. . .	2 09		41
42	nVirginian Terminal Ry. Co., The	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .		42
43	Washington Southern Ry. Co.	1 48	2 00	. . .	1 90	2 13	14 80	2 11	1 41	2 06	3 16	2 38	4 16	. . .	. . .	2 11		43
44	Winchester and Potomac R. R. Co.	. . .	2 73	. . .	. . .	2 10	. . .	2 10	1 56	. . .	. . .	2 38	. . .	. . .	. . .	2 18		44
45	Winchester and Strasburg R. R. Co.	1 15	2 12	. . .	1 75	1 96	. . .	1 96	1 50	1 81	. . .	2 19	. . .	. . .	. . .	1 96		45
46	Wise Terminal Co.	. . .	. . .	. . .	. . .	1 84	. . .	1 84	1 42	. . .	. . .	2 09	3 29	. . .	. . .	1 84		46
	Total	$1 35	$2 19	$1 61	$1 62	$2 07	$11 37	$2 04	$1 53	$2 18	$3 08	$2 25	$3 22	$1 51	$2 01			

a, b, d, g, h, n, see page—107

INCREASES OVER 1909—

General officers	138 cents.	Machinists	13 cents.
Other officers	34 cents.	Carpenters	9 cents.
General office clerks	11 cents.	Other shopmen	6 cents.
Station agents	6 cents.	Section foremen	5 cents.
Other stationmen	5 cents.	Other trackmen	9 cents.
Enginemen	29 cents.	Telegraph operators and dispatchers	11 cents.
Firemen	20 cents.	Employees—floating equipment	2 cents.
Conductors	14 cents.	Other employees and laborers	13 cents.
Other trainmen	11 cents.	Average daily compensation in Virginia	10 cents.
		Average daily compensation—entire line	5 cents.

TABLE No. 46—ACCIDENTS ON STEAM RAILROADS IN VIRGINIA—1910.

Number	NAME OF COMPANY.	Average Number of Employees	RESULTING FROM MOVEMENT OF TRAINS								RESULTING FROM OTHER CAUSES								TOTAL ACCIDENTS		
			EMPLOYEES		PASSENGERS		OTHERS		TOTAL		EMPLOYEES		PASSENGERS		OTHERS		TOTAL				
			Killed	Injured	Killed	Injured	Killed	Injured	Killed	Injured	Killed	Injured	Killed	Injured	Killed	Injured	Killed	Injured	Killed	Injured	Number
1	Atlantic Coast Line R. R. Co.	1,203	5	14	1		3	5	9	22		2						2	9	24	1
2	aAtlantic & Danville Ry. Co., The																				2
3	Big Sandy & Cumberland R. R. Co.	31																			3
4	Big Stone Gap & Powell's Val. Ry. Co.	8					2		2										2		4
5	Big Stony Ry. Co.	24		2			1		1	2		2						2	1	4	5
6	Blackstone & Lunenburg R. R. Co.	11																			6
7	Carolina, Clinchfield & Ohio Ry.	427	4	28		1	2	2	6	31									6	31	7
8	Chesapeake & Ohio Ry. Co., The	5,763	9	84		15	11	33	20	132	2	28		2			2	30	22	162	8
9	bChesapeake & Western R. R. Co.																				9
10	Chesapeake Western Ry.	74		1						1										1	10
11	Cumberland Val. & Martinsb'g R.R. Co.	55		1						1		2						2		3	11
12	Danville & Western Ry. Co.	168		8		1				9		2		1				3		12	12
13	Delaware, Maryland & Virginia R.R. Co	33		1						1										1	13
14	aFranklin & Pittsylvania R. R. Co.																				14
15	Interstate R. R. Co.	167		8						8										8	15
16	Laurel Ry. Co.	28		1						1										1	16
17	Louisville & Nashville R. R. Co.	307	1	20		2	2	7	3	29		5						5	3	34	17
18	dLynchb'g Belt Line & Connect'g R'y Co																				18
19	Marion & Rye Valley Ry. Co.	50																			19
20	Mount Airy & Eastern Ry. Co.	23																			20
21	Nelson & Albemarle Ry. Co.	28																			21
22	New River, Holston & Western R.R. Co.	20																			22
23	New York, Phila. & Norfolk R. R. Co.	1,079	3	12		1	1	3	4	16		18						18	4	34	23
24	Norfolk & Portsm'h Belt Line R. R. Co.	102		2				4		6		1						1		7	24
25	gNorfolk Southern R. R. Co.	540										5						5		5	25
26	hNorfolk & Southern Ry. Co.	n		5		1				6		17						17		23	26
27	Norfolk & Western Ry. Co.	9,820	14	194	1	11	41	58	56	263		199						199	56	462	27
28	Pocahontas & Western R. R. Co.	11																			28
29	Potomac, Fred'bg & Piedm't R. R. Co.	75																			29
30	Richm'd, Fred'bg & Potomac R. R. Co.	1,742	2	21		3	1	14	3	38		57					2	59	3	97	30
31	Roaring Fork R. R. Co.	8																			31
32	Rosslyn Connecting R. R. Co.	35		2						2										2	32
33	Seaboard Air Line Ry.	883	2	28			5	13	7	41		80						80	7	121	33
34	Southern Ry. Co.	5,210	4	178		50	24	49	28	277		205						205	28	482	34

35	Surry, Sussex & Southampton Ry. Co.	148																				35
36	Tidewater & Western R. R. Co.	114	1						1										1			36
37	Valley Railroad Co. of Virginia	128		2				2		4		6						6		10		37
38	oVirginia Air Line Ry. Co.																					38
39	Virginia Anthracite Coal & Ry. Co.	20																				39
40	Virginia-Carolina Ry. Co.	68																				40
41	pVirginia-Carolina & Southern Ry. Co																					41
42	Virginia & Kentucky Ry. Co.	12																				42
43	Virginia Southern R. R. Co.	32																				43
44	Virginia & Southwestern Ry. Co.	690	3	57		4	4	4	7	65		39						39	7	104		44
45	Virginian Ry. Co., The	2,428	1	54		5	1	6	2	65		79						79	2	144		45
46	uVirginian Terminal Ry. Co., The																					46
47	Washington Southern Ry. Co.	1,650	3	35		1		3	3	39		63				3		66	3	105		47
48	Winchester & Potomac R. R. Co.	78		1						1		6						6		7		48
49	Winchester & Strasburg R. R. Co.	54		2		1				3		3						3		6		49
50	Wise Terminal Co.	12																				50
	Total	33,349	52	761	2	99	98	203	152	1,063	2	819		3		5	2	827	154	1,890		

aIncluded with Southern Railway Company.
bIncluded with Chesapeake Western Railway.
dIncluded with Norfolk & Western Railway Company.
gFor the period of two months ending June 30, 1910.
name changed from Norfolk & Southern Railway Company.
hFor the period of ten months ending April 30, 1910.
Name changed to Norfolk Southern Railroad Company.
nIncluded with Norfolk Southern R. R. Co.
oIncluded with Chesapeake and Ohio Railway Company.
pIncluded with Virginia-Carolina Ry. Co.
uIncluded with The Virginian Railway Co.

INCREASES OVER 1909:

Accidents resulting from movement of trains—Injured.	200
Accidents resulting from other causes—Injured	87
Total number injured, 287, or 17.90 per cent.	
Total casualties of all kinds, 1910	2,044
Total casualties of all kinds, 1909	1,773
Increase	271

DECREASES FROM 1909:

Accidents resulting from movement of trains—Killed.	11
Accidents resulting from other causes—Killed	5
Total number killed, 16, or 9.41 per cent.	

TABLE No. 47—ACCIDENTS ON ELECTRIC RAILWAYS IN VIRGINIA—1910.

Number	NAME OF COMPANY	PASSENGERS			EMPLOYEES			OTHERS			GRAND TOTAL			Number
		Killed	Injured	Total	Killed	Injured	Total	Killed	Injured	Total	Killed	Injured	Total	
1	Blue Ridge Light and Power Co.													1
2	Bluestone Traction Co.		1	1								1	1	2
3	Charlottesville and Albemarle Ry. Co.													3
4	Citizens Railway, Light and Power Co.	1	6	7		1	1		1	1	1	8	9	4
5	Danville Railway and Electric Co.		6	6		2	2	1		1	1	8	9	5
6	Great Falls and Old Dominion R. R. Co.		1	1	1		1		2	2	1	3	4	6
7	Hampton Roads Traction Co.													7
8	Lynchburg Traction and Light Co.		89	89	1		1				1	89	90	8
9	Newp't News & Old Point Ry. & Elec. Co.	1	15	16	1	4	5		10	10	2	29	31	9
10	Norfolk and Atlantic Terminal Co.		21	21		3	3		16	16		40	40	10
11	Norfolk City and Suburban Ry. Co.		2	2								2	2	11
12	Norfolk & Ocean View Ry. Co.		10	10		2	2		5	5		17	17	12
13	Norfolk and Portsmouth Traction Co.	2	48	50		8	8		20	20	2	76	78	13
14	Norfolk Railway and Light Co.													14
15	Radford Water Power Co.													15
16	Richmond and Chesapeake Bay Ry. Co.	1	1	2		5	5				1	6	7	16
17	*Richmond and Petersburg Electric Ry. Co.		9	9				1		1	1	9	10	17
18	Roanoke Railway and Electric Co.		1	1				1	2	3	1	3	4	18
19	Tazewell Street Ry. Co.													19
20	Virginia Railway and Power Co.	1	19	20		3	3	1	17	18	2	39	41	20
21	Washington, Alex. & Mt. Vernon Ry. Co.		13	13	1	1	2	2	10	12	3	24	27	21
22	†Washington, Arlington & Falls Ch. Ry. Co.													22
	Total	6	242	248	4	29	33	6	83	89	16	354	370	

*For period of five months, July 1 to November 30, 1909; consolidated with Virginia Railway and Power Company, November 30, 1909.
†Included with Washington, Alexandria and Mount Vernon Railway Company.

INCREASES OVER 1909:

Passengers killed	1
Passengers injured	75
Employees injured	9
Others injured	53
Total injured	137
Total casualties	130, or 54.17 per cent.

DECREASES FROM 1909:

Employees killed	2
Others killed	6
Total killed	7

Inspections

In carrying out the duty of seeing to the proper enforcement of the laws on the statute books affecting labor, which devolves by law upon this department, there were made during the year eight hundred and thirty-four inspections of factories, workshops, mercantile establishments, etc., covering every section of the State and every character of industry. The marked benefits resulting from the "Act in relation to certain proper sanitary arrangements to be provided in factories, workshops, mercantile establishments or offices and imposing penalties for failure to provide such arrangements," approved February 9, 1910, and inserted at length in the last annual report, have already been manifest. The general sanitary conditions show a distinct improvement, and changes are being made by owners and occupants as rapidly as possible to effect a full compliance with the law in letter and in spirit. The toilet accommodations show a most pronounced improvement over conditions heretofore existing. The neglect of this feature of sanitation apparently had its origin rather in thoughtlessness or a lack of necessary knowledge of the subject on the part of employers than in a disposition to prejudice the health of or give inconvenience to their employees. Another good resulting from these inspections is the safety assured the workman by the adoption of appliances for guarding machinery dangerously exposed. Many plants have adopted the suggestions of the inspector and have minimized the danger to a degree. A noted decrease is shown in the number of unguarded elevators and in stairways without hand rails which were a constant menace to the safety of the employees.

Sixty-one buildings were not provided with fire escapes as required by law, and to each proper notice was given requiring that the law be complied with.

The law requiring employers to furnish seats for female employees has been enforced, few employers demurring to its requirements, as the benefits arising from the law as well as the propriety of it are so potent.

One of the chief activities of the inspector, and the one trenching most on his time, has been the enforcement of the "CHILD LABOR LAW" and the law governing the hours of daily labor of women and children. These laws were being violated either by neglect or intent, and wherever a violation was discovered proper notice was given, and where such violation was persisted in after such notice the machinery of the law was invoked to impose the penalty prescribed for such violation. It has been found in many instances difficult to get testimony to convict, the cupidity of parents frequently prompting them to misrepresent the ages of the children; and in the absence of vital statistics by which the age can be accurately ascertained the department has no recourse. To correct this evil as far as possible, the department has determined to hereafter require all statements as to the age of a child to be made under oath.

The number and character of violations of the several laws as reported by the inspector was as follows:

Child labor law	116	violations
Child labor and ten-hour law	50	"
Ten-hour law	224	"
Sanitary law	149	"
Seats for females law	57	"
Fire escape law	61	"
Total	657	"

In many instances of offense the employers plead ignorance of the law and corrected the evil on notice. When, however, the offense was persisted in the offending party was promptly prosecuted.

The number of convictions under the several laws was as follows:

Employers fined for violating "child labor law"	13
Parents fined for misrepresenting the age of child	8
Fined for unsanitary conditions (toilets)	1
Employers fined for violating "ten-hour law"	14
Employers fined for violating "seats for females"	1
Total	37

CASES DISMISSED.

Parents misrepresenting age	81
Before trial "child labor law"	4
Before trial ten-hour law	5
Total	90

In the dismissed cases reported the courts were merciful, since in many cases there were no reliable records, and illiterate parents had to guess the ages of their children. A continuous system of inspection will allay or destroy this condition by putting parents on notice. In many instances it has been urged by employers that their employment of children under lawful age had been prompted by a feeling of charity for the destitute, overlooking the fact that the law devolves the exercise of discretion on the officers named in the statute as authorized to grant permits to children between the ages of twelve and fourteen to work in the various establishments. The impression of the inspector is that cupidity rather than charity has been the impelling motive of many who have heretofore been reported for violating the law.

The following gives a detail report of the inspections made:

AWNINGS, TENTS, ETC.

Five Inspections.—Hours of labor eight to fourteen for males and eight to ten for females. Sanitary conditions fair. Dangerously exposed machinery in two plants; elevators unguarded in one, and absence of rail to stairway in three.

BOTTLING WORKS.

Thirty-three Inspections.—Hours of labor eight to fourteen for males and eight to twelve for females. Toilets bad in two, fair in eighteen, and good in six plants. Dangerously exposed machinery in three plants; elevators unguarded in nine; stairways without rails in ten, and no fire escapes to four.

BROOM AND MATTRESS FACTORIES.

Five Inspections.—Hours of labor nine to ten and one-half for males and nine to ten for females. Sanitary conditions fair.

CANDY MANUFACTORIES.

Twelve Inspections.—Hours of labor nine to ten. Toilets bad in two plants, fair in six, and good in three. Stairs without rail in five plants and four plants without proper fire escapes.

CARRIAGE FACTORIES.

Thirteen Inspections.—Hours nine to ten and one-half for males and nine to ten for females. Toilets bad in one plant, fair in six, and good in one. Dangerously exposed machinery in nine plants; elevators unguarded in eight; stairways without rails in three, and six plants without fire escapes.

CHEMICALS, DRUGS AND PAINTS.

Seventeen Inspections.—Hours of labor eight to thirteen for males and eight to ten for females. Toilets fair and good. Dangerously exposed machinery in two plants; elevators unguarded in seven; stairways without rails in eight, and six without fire escapes.

CIGARS, CIGARETTES AND CHEROOTS.

Twenty-four Inspections.—Hours eight to twelve for males and eight to ten for females. Toilets bad in one, fair in twelve, and good in two. Dangerously exposed machinery in four plants; stairways without rails in three, and three plants without fire escapes.

COTTON MILLS.

Six Inspections.—Hours of labor nine to ten and one-half for males and females. Sanitary conditions bad in five and good in one. Machinery dangerously exposed in four plants; elevators unguarded in four; stairways without rails in three, and three were without fire escapes.

DEPARTMENT STORES.

Twenty-five Inspections.—Hours of labor ten to fourteen for males and females. Sanitary conditions good. Necessary seats were not provided in four plants. The proprietors were duly notified as to the infraction of the ten-hour law and the law in reference to seats, and compliance with the statute demanded.

DRY GOODS STORES.

One hundred and three Inspections.—Hours of labor ten for males and females. Sanitary conditions good. A few stores failed to have the required number of seats and were formally notified and required to comply with the law.

FIVE AND TEN CENT STORES.

Twenty-four Inspections.—Hours ten for males and females. Sanitary conditions good. An insufficient number of seats in several plants; the proprietors were notified to comply with the law.

FURNITURE FACTORIES.

Sixteen Inspections.—Hours of labor nine and one-half to ten and one-half. Toilets bad in four plants and fair in the remainder. Nine plants had dangerous machinery unnecessarily exposed; ten had the elevators unguarded, and eight had stairways without railings.

HAT FACTORIES.

Five Inspections.—Hours of labor eight and one-half for males and females. Sanitary conditions bad in one plant, fair in three, and excellent in one.

IRON AND MACHINE WORKS.

Sixty Inspections.—Hours of labor eight to ten and one-half. Toilets bad in eleven plants, fair in thirty-four, and good in seven. Forty-one plants had dangerous machinery unduly exposed; seven had elevators unguarded; eleven had stairways without rails, and one plant was without fire escapes.

KNITTING MILLS.

Fifteen Inspections.—Hours of labor ten. Toilet conditions bad in one plant, fair in seven and good in one. Dangerous machinery was unduly exposed in five plants; elevators were not guarded in six, and the stairways were without rails in four.

LAUNDRIES.

Twenty-three Inspections.—Hours of labor ten to thirteen for both male and female. Toilet conditions bad in three, fair in thirteen, and good in seven. Dangerous machinery unduly guarded in five plants; elevators unguarded in six, and stairways without rails in four.

MILLINERY STORES.

Fifty-three Inspections.—Hours of labor ten to twelve for males and ten to fourteen for females. Sanitary conditions good. In some instances there were not the required number of seats, which were required to be installed.

OVERALLS AND SHIRTS.

Twenty-two Inspections.—Hours eight and three-quarters for males and females. Toilet conditions fair. One plant had dangerous machinery unnecessarily exposed; three had unguarded elevators; five had stairways without railings, and three were without proper fire escapes.

PAPER BOX FACTORIES.

Fourteen Inspections.—Hours of labor nine and one-half to ten for male and female. Sanitary conditions fair. In seven plants dangerous machinery was unduly exposed; in nine the elevators were without guards; in six the stairways were without rails, and one was not provided with the required fire escape.

PAPER MILLS.

Three Inspections.—Hours of labor nine to thirteen for males and females. Toilet conditions were bad in one plant and fair in two. Dangerous machinery was unduly exposed in two plants, and in one the stairways were without railings.

PEANUT CLEANING.

Twelve Inspections.—Hours of labor ten for both sexes. Toilet in one plant bad and in the others fair. Eight plants had dangerous machinery unnecessarily exposed; seven had elevators unguarded; four had no hand rail to stairways, and ten were not provided with proper fire escapes.

PRINTING HOUSES.

Sixty-two Inspections.—Hours of labor eight to ten for males and females. Sanitary conditions fair. Ten plants had dangerous machinery unduly exposed; eight had elevators unguarded; twenty-five had stairways without hand rails, and ten were not provided with fire escapes.

SILK MILLS.

Three Inspections.—Hours ten for males and females. Sanitary conditions fair. Dangerous machinery exposed in three plants and elevators not guarded in three.

SLATE WORKS.

Seven Inspections.—Hours ten. Sanitary conditions good.

TAILORS.

Sixty-one Inspections.—Hours ten to twelve for both male and female. Toilets bad in three instances and fair in others. Elevators unguarded in two instances; stairways without rails in twelve, and no fire escapes in eight.

TOBACCO MANUFACTURERS.

Forty-three Inspections.—Hours of labor six to ten for males and females. Toilets were bad in eight plants and fair to good in others. Dangerous machinery was not properly guarded in eleven plants; elevators were without guards in seventeen; stairways were without railings in sixteen, and sixteen plants were not provided with fire escapes.

TRUNKS AND BAGS.

Four Inspections.—Hours of labor nine to ten and one-half for males and females. Dangerous machinery was unnecessarily exposed in three

plants; elevators were unguarded in four; stairways were without hand rails in four, and three were not provided with proper fire escapes.

UNCLASSIFIED.

One hundred and eight Inspections.—Hours of labor eight to twelve for males and eight to ten for females. Improved sanitary conditions throughout.

WOODWORKING PLANTS.

Fifty-six Inspections.—Hours of labor nine to ten for both sexes. Toilet accommodations were found to be bad in thirteen and fairly good in the others. In thirty-four plants dangerous machinery was unduly exposed; in twelve the elevators were without guards; in twenty-two the stairways were without hand rails, and in five the proper fire escapes had not been provided.

Permits Issued

To Sanction the Employment of Children Between the Ages of 12 and 14 Years.

Since the last annual report permission has been granted to one hundred and sixty children between the ages of twelve and fourteen years to work in various establishments. Of these permits twenty-five were issued by the courts, one hundred and twenty-two by the mayors of the several cities, and thirty-three by justices of the peace. The reasons given for issuing these permits were desertion by father, four; dependent upon own labor, forty-two; invalid fathers, twenty-three; orphans, twenty; to support widowed mother, sixty-seven; and in four cases no reasons were given.

The permits were issued in the following localities:

Danville.—Nine permits. Reasons given: Deserted by father, three cases; dependent on own labor, five; invalid father, twelve; orphan, one; to support widowed mother, fifteen cases.

Fries.—Thirteen permits. Reasons given: Dependent on own labor, four cases, and orphans in nine.

Lynchburg.—Nine permits. Reasons assigned: Dependent upon own labor, one case; invalid father, three; orphan, one, and widowed mother, four.

Norfolk.—Two permits. Reasons assigned: Deserted by father, one case, and an invalid father in one.

Petersburg.—Eighteen permits. Reasons given: Dependent on own labor, eight cases; invalid father, two; orphans, two; widowed mother, six.

Richmond.—Forty-one permits. Reasons given: Dependent on own labor, one case; orphans, five; widowed mother, twenty-four, and in one case no reason was assigned.

Rocky Mount.—One permit. Reason given: The child being dependent on its own labor for support.

Roanoke.—Three permits. Reasons given: Dependent on own labor for support, two; widowed mother, one.

Saltville.—One permit was issued to help support widowed mother.

South Boston.—Four permits. One to support a widowed mother and three in which no reasons were assigned.

Suffolk.—Twenty-three permits. Eight were given where the child was dependent on its own labor for support; four where there was an invalid father; two who were orphans, and nine who had to labor to support a widowed mother.

Staunton.—Three permits. Reasons assigned: Dependent on own labor in two cases, and invalid father in one.

Winchester.—One permit to a child who was the support of a widowed mother.

Laws Affecting Labor.

A compilation of the State statutes affecting labor in existence at the time of publication of the respective reports appeared in the ninth and twelfth annual reports of this office. The editions having been exhausted, it was determined to reprint those laws and add thereto all subsequent legislation on the subject.

Chap. 863.—An act to provide for a Bureau of Labor and Industrial Statistics and for defining the duties of said bureau. Approved March 3, 1898.

1. Be it enacted by the General Assembly of Virginia, That a Bureau of Labor and Industrial Statistics of the State of Virginia is hereby established.

2. It shall be the duty of said bureau to collect, assort, systematize, and present in annual reports to the Governor, to be by him biennially transmitted to the legislature, statistical details relating to all departments of labor, penal institutions, and industrial pursuits in the State, especially in their relation to the commercial, industrial, social, educational and sanitary condition of the laboring classes, and to the permanent prosperity of the productive industries of the State.

3. The Governor shall appoint, by and with the consent of the Senate, some suitable person who is identified with the labor interests of the State, who shall be designated Commissioner of Labor Statistics, and who shall, upon the request of the Governor, furnish such information as he may require.

4. The Commissioner shall have power to take and preserve testimony, examine witnesses under oath, and administer the same; and in the discharge of his duties, may, under proper restrictions, enter any public institution of the State, and any factory, workshop or mine. The Commissioner may also furnish and deliver a written or printed list of interrogations to any person, company, or the proper officer of any corporation, and require full and complete answers to be made thereto and returned under oath within thirty days of receipt of said list of questions; and if any person who may be sworn to give testimony shall wilfully fail or refuse to answer any question propounded to him concerning the subject of such examination, as provided in this act; or if any person to whom a written or printed list of interrogations has been furnished by said Commissioner shall neglect or refuse to fully answer and return the same under oath, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof, before a court of competent jurisdiction, shall be fined in a sum not exceeding one hundred dollars nor less than twenty-five dollars, or by imprisonment in the county jail not exceeding ninety days, or by both fine and imprisonment.

5. All State, county, township and city officers are hereby directed to furnish said Commissioner, upon his request, all statistical information in reference to labor which shall be in their possession as such officers.

6. The sum of two thousand dollars per annum is hereby appropriated out of any funds in the State treasury not otherwise appropriated, eight hundred dollars of which is to be used as salary of the said Commissioner and the balance to be used to meet contingent expenses, and so forth.

7. This act shall be in force from its passage.

Sec. 1790c. Bureau of Labor and Industrial Statistics and defining the duties of said Bureau.

(1) A Bureau of Labor and Industrial Statistics is hereby established.

(2) It shall be the duty of said bureau to collect, assort, systematize, and present in annual reports to the Governor, to be by him biennially transmitted to the legislature, statistical details relating to all departments of labor, penal institutions, and industrial pursuits in the State, especially in their relation to the commercial, industrial, social, educational and sanitary condition of the laboring classes, and to the permanent prosperity of the productive industries of the State.

(3) The Governor shall appoint, by and with the consent of the Senate, some suitable person who is identified with the labor interests of the State, who shall be designated Commissioner of Labor Statistics, and who shall, upon the request of the Governor, furnish such information as he may require. The term of office for said Commissioner shall be two years from the date of his appointment, with power of removal by the Governor for cause.

(4) The Commissioner shall have power to take and preserve testimony, examine witnesses under oath, and administer the same; and when he is of the opinion, from said testimony, that the laws of the State relating to labor have been violated or evaded, he shall make a thorough investigation as to such violation or evasion, and to that end may, under proper restrictions, enter any public institution of the State, and any factory, store, workshop or mine, and interrogate any such person, firm, or the proper officer of a corporation, or file a written or printed list of interrogatories and require full and complete answers to be made thereto and returned under oath within thirty days of receipt of said list of questions; and if any person who may be sworn to give testimony shall wilfully fail or refuse to answer any legal and proper question propounded to him concerning the subject of such examination, as indicated in the second section of this act, or if any person to whom a written or printed list of such interrogations has been furnished by said Commissioner shall neglect or refuse to fully answer and return the same under oath, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof before a court of competent jurisdiction shall be fined a sum not exceeding one hundred dollars nor less than twenty-five dollars, or by imprisonment in the county jail not exceeding ninety days, or by both fine and imprisonment; provided, however, that nothing in this act shall be construed as permitting the Commissioner or any employee of this bureau to make use of any information or statistics gathered from any person, company or corporation for any other than the purposes of this act.

(5) If the Commissioner shall find, upon such investigation, that the laws of this State relating to labor have been violated or evaded, he shall notify the person, firm or proper officer of the corporation of such violation or evasion, in writing, and unless the laws are fully complied with within

a reasonable time, not to exceed thirty days, then, and in that event, the Commissioner shall make a report of such violation or evasion to the circuit or corporation court, and the attorney for the Commonwealth of the county or city wherein such violation or evasion of the law may occur.

Note.—The above section covers the law as amended (Acts 1906, p. 47-48).

Sec. 944a. Chain gangs; rules concerning, etc.

(20) In any county or city in which no chain gang has been established the judge of the circuit court of such county or of the corporation court of such city shall, upon the application of the board of supervisors of any county in which a chain gang has been established, order any person confined in the jail of his county or city, and liable to work in chain gangs, to be delivered by the jailer of his county or city to the person authorized to take charge of and work such prisoner or prisoners in the chain gang of such other county, which order shall specify the length of time such person may be required to work in such chain gang. The jailer shall take a receipt for every person delivered by him under such order, which shall discharge him from all liability for the escape of such prisoner. In consideration of the services and work to be performed by said prisoner, the said board of supervisors shall keep and maintain said prisoner out of the road fund of said county until the end of the term of confinement of said prisoner without further cost to the State.

Every person held to labor under the provisions of this chapter, for the non-payment of any fine imposed upon him or for the non-payment of any costs, shall be allowed so much per day for each day he labors as in the opinion of the superintendent of roads his services are worth, not to exceed twenty-five cents per day, and in addition thereto shall be allowed twenty-five cents per day for each day of his confinement, whether he labors or not, all of which shall be credited on said fine and costs, or costs where there is no fine. A statement of the amount of the fine, with the costs, and the number of days' labor required to discharge the same, shall be made out under the direction of the judge, and delivered to the person in charge of the chain gang at the time he receives the delinquent. No person shall be held to labor in any chain gang for the non-payment of any fine imposed upon him for a longer period than now provided by law.

Whenever a person is sentenced to confinement in the county jail, and there is no chain gang in the county in which he is sentenced, and the supervisors of any county in which a chain gang is established have not applied for such prisoner, he may, in lieu of such confinement, in the discretion of the court, be compelled to work on the public roads of the county in such manner and under such regulations as the judge of the court may determine for the number of days for which he has been sentenced to confinement.

Sec. 1067a. Fire escapes from buildings of over three stories.

It shall be the duty of the owner or owners of all factories, workshops, hotels, school buildings, and hospitals in this State of over three stories in height, theatres and public places of amusement, to provide for the safe exit of the occupants thereof in case of fire by the erection or construction of fire escapes of the most improved modern design. The character and

design of said fire escapes shall, in cities and towns, be selected by the council of said cities and towns; and where the buildings are not located in cities or towns by the board of supervisors of the county. Any owner or owners of such buildings shall have the right to require the council of the city or town in which said buildings are located, or in the counties the board designated by this act, to make such selection of said fire escapes as is provided by this act; and in case of their failure or refusal they shall be compellable by mandamus. Any owner or owners of such buildings who shall fail to comply with the first section of this act by the first day of January, eighteen hundred and ninety-one, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars nor more than one hundred dollars for each month they shall fail to provide such fire escapes. (1889-'90, p. 154; 1902-'3-'4, p. 735.)

Sec. 1294d. When electric railway companies to use vestibule fronts; penalty.

(27) All urban, interurban and suburban electric railway companies shall use vestibule fronts on all motor cars run, operated or transported by them on their lines during the months of November, December, January, February, March and April of each year: provided, that such vestibuled fronts need not be used on open summer cars run, operated or transported by them during the months of November and April; and provided, that said companies shall not be required to close the sides of said vestibules; and any such company refusing or failing to comply with said requirement shall be subject to a fine of not less than ten dollars nor more than one hundred dollars for each offense.

Sec. 1294k. Imposing on railroad corporations liability for injury to their employees in certain cases.

Every corporation operating a railroad in this State, whether such corporation be created under the laws of this State or otherwise, shall be liable in damages for any and all injury sustained by any employee of such corporation as follows: When such injury results from the wrongful act, neglect or default of an agent or officer of such corporation superior to the employee injured, or of a person employed by such corporation having the right to control or direct the services of such employee injured, or the services of the employee by whom he is injured; and also when such injury results from the wrongful act, neglect or default of a co-employee engaged in another department of labor from that of the employee injured, or of a co-employee on another train of cars, or of a co-employee who has charge of any switch, signal point or locomotive engine, or who is charged with dispatching trains or transmitting telegraphic or telephonic orders. Knowledge by any employee injured of the defective or unsafe character or condition of any machinery, ways, appliances or structures of such corporation shall not of itself be a bar to recovery for any injury or death caused thereby. When death, whether instantaneous or otherwise, results from any injury to any employee of such corporation received as aforesaid, the personal representative of such employee shall have a right of action therefor against such corporation, and may recover damages in respect thereof. Any contract or agreement, express or implied, made by any such employee to waive the benefit of this section or any

part thereof, shall be null and void, and this section shall not be construed to deprive any such employee, or his personal representative, of any right or remedy to which he is now entitled under the laws of this State.

The rules and principles of law as to contributory negligence, which apply to other cases, shall apply to cases arising under this act, except in so far as the same are herein modified or changed.

The following section of the Constitution covers the doctrine adopted by that body:

Sec. 162. The doctrine of fellow-servant, so far as it affects the liability of the master for injuries to his servant resulting from the acts or omissions of any other servant or servants of the common master, is, to the extent hereinafter stated, abolished as to every employee of a railroad company engaged in the physical construction, repair or maintenance of its roadway, track or any of the structures connected therewith, or in any work in or upon a car or engine standing upon a track, or in the physical operation of a train, car, engine or switch, or in any service requiring his presence upon a train, car or engine; and every such employee shall have the same right to recover for every injury suffered by him from the acts or omissions of any other employee or employees of the common master that a servant would have (at the time when this Constitution goes into effect) if such acts or omissions were those of the master himself in the performance of a non-assignable duty; provided, that the injury so suffered by such railroad employee result from the negligence of an officer or agent of the company of a higher grade of service than himself, or from that of a person employed by the company having the right or charged with the duty to control or direct the general services or the immediate work of the party injured, or the general services or the immediate work of the co-employee through or by whose act or omission he is injured; or that it result from the negligence of a co-employee engaged in another department of labor, or engaged upon or in charge of any car upon which or upon the train of which it is a part the injured employee is not at the time of receiving the injury, or who is in charge of any switch, signal point or locomotive engine, or is charged with dispatching trains or transmitting telegraphic or telephonic orders therefor; or whether such negligence be in the performance of an assignable or non-assignable duty. The physical construction, repair or maintenance of the roadway, track or any of the structures connected therewith, and the physical construction, repair, maintenance, cleaning or operation of trains, cars or engines shall be regarded as different departments of labor within the meaning of this section. Knowledge, by any such railroad employee injured, of the defective or unsafe character or condition of any machinery, ways, appliances or structures shall be no defense to an action for injury caused thereby. When death, whether instantaneous or not, results to such an employee from any injury for which he could have recovered, under the above provisions, had death not occurred, then his legal or personal representative, surviving consort or relatives (and any trustee, curator, committee or guardian of such consort or relatives) shall, respectively, have the same rights and remedies with respect thereto as if his death had been caused by the negligence of a co-employee while in the performance, as vice-principal, of a non-assignable duty of the master.

Every contract or agreement, express or implied, made by an employee to waive the benefit of this section shall be null and void. This section shall not be construed to deprive any employee, or his legal or personal representative, surviving consort or relatives (or any trustee, curator, committee or guardian of such consort or relatives), of any rights or remedies that he or they may have by the law of the land at the time this Constitution goes into effect. Nothing contained in this section shall restrict the power of the General Assembly to further enlarge for the above-named class of employees the rights and remedies hereinbefore provided for, or to extend such rights and remedies to, or otherwise enlarge the present rights and remedies of, any other class of employees of railroads or of employees of any person, firm or corporation.

Sec. 1743d. To promote the public health and to regulate the sanitary construction, house draining, and plumbing; registration of plumbers in cities of 8,000 inhabitants; board of examination of plumbers therein; their powers and duties; compensation; penalties.

(1) In all cities in the State of Virginia having a population of more than eight thousand inhabitants there shall be a board for the examination of plumbers, of four members, consisting of one member to be known as the chief health officer of the city, and one member to be known as the plumbing inspector of the city, one journeyman plumber, and one master plumber, all of whom shall be residents of the city in which their duties are to be performed, and the plumbing inspector, journeyman and master plumbers shall be licensed plumbers. The members of said board shall be selected as the councils of the respective cities may determine, and said councils shall also prescribe the terms of office of the several members of such board, and the method of their removal from office. The terms of office of such chief health officers and plumbing inspectors as may be in office when this act shall go into effect shall not be affected hereby, and they shall be constituted members of their respective boards for the term for which they may have been elected.

(2) The persons who compose the first plumbing board under this act shall, within ten days after their appointment, meet in their respective city building, or place designated by the city council, and organize by the selection of one of their number as chairman, and the plumbing inspector shall be secretary of said board. It shall be the duty of the secretary to keep full, true and correct minutes and records of all licenses issued by it, together with their kinds and dates and the names of persons to whom issued, in books to be provided by such city for that purpose, which books and records shall be in all business hours open for free inspection by all persons.

(3) The said board shall have power, and it shall be its duty, to adopt rules and regulations not inconsistent with the laws of the State or the ordinances of the city for the sanitary construction, alteration and inspection of plumbing and sewerage connections and drains placed in or in connection with any and every building in such city, in which it will prescribe the kind and size of material to be used in such plumbing and the manner in which such work shall be done.

(4) The board shall fix stated times and places of meeting, which

times shall not be less than once in every two weeks, and may be held oftener upon written call of the chairman of the board, and the board shall adopt rules for the examination, at such times and places, of all persons who desire a license to work at the construction or repairing of plumbing within the said city.

(5) Any person not already licensed as herein provided desiring to work at the business of plumbing in any such city shall make written application to the said board for examination for license, which examination shall be made at the next meeting of the board, or as soon thereafter as practicable, and said board shall examine said applicant as to his practical knowledge of plumbing, house draining, and plumbing ventilation and sanitation, which examination shall be practical as well as theoretical; and if the applicant has shown himself competent the plumbing board shall cause its chairman and secretary to execute and deliver to the applicant a license authorizing him to do plumbing in such city.

(6) All licenses may be renewed by the board at the dates of their expiration. Such renewal licenses shall be granted, without re-examination, upon a written application of the licensee filed with the board and showing that his purposes and conditions remain unchanged, unless it is made to appear by affidavit before the board that the applicant is no longer competent or entitled to such renewal license, in which event the renewal license shall not be granted until the applicant has undergone the examination hereinbefore required.

(7) All licenses shall be good for one year from their dates, provided that any license may be revoked by the board at any time upon a hearing upon sufficient written, sworn charges filed with the board, showing the holder of the license to be then incompetent or guilty of a wilful breach of the rules, regulations or requirements of the board, or of the laws or ordinances relating thereto, or of other causes sufficient for the revoking of his license, of which charges and hearing the holder of such license shall have written notice.

(8) It shall be unlawful for any person to do any plumbing in any such city of the State unless he be licensed as herein provided.

(9) The fee for the original license of a journeyman plumber shall be one dollar. All renewal fees shall be fifty cents. All license fees shall be paid, prior to the execution and delivery of the license, to the treasurer of the city for which the license was issued.

(10) The city plumbing inspector shall inspect all plumbing work in process of construction, alteration or repair within his respective jurisdiction, and for which a permit either has or has not been granted, and shall report to said board all violations of any law or ordinance, or rule or regulation of the board, in connection with the plumbing work being done, and also shall perform such other appropriate duties as may be required of him by said board. The city council of such city may provide for the election of one or more assistant inspectors, if deemed advisable, to assist in the performance of the duties of the inspector, who shall be practical licensed plumbers.

(11) The inspector shall be required to stop any defective plumbing not being done in accordance with the requirements of the rules and regulations therefor of the board; and the plumbing board shall have the power to cause such defective or insufficient work to be torn out and removed

if, after notice to the owner or plumber doing the work, the board shall find the work or any part thereof to be really defective and insufficient.

(12) The appointment of the board shall be within thirty days from the taking effect of this act. And where such city has a chief health officer and plumbing inspector, they shall act as members of such board *ex officio*.

(13) The salaries of the members of the board and the assistant inspector shall be prescribed by the city councils in their respective cities.

(14) Any person violating any provision of this act or of any lawful ordinances, or rules or regulations, authorized by this act, shall be deemed guilty of a misdemeanor, and shall be fined not exceeding fifty nor less than five dollars for each and every violation thereof; and if such person hold a plumber's license, it may, in the discretion of the board, be forfeited, and he shall not be entitled to another plumber's license for the space of one year after such forfeiture is declared against him by the board.

(15) All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

(16) Any city or town in the Commonwealth of eight thousand inhabitants or less may bring itself within the terms of this act by ordinance, and in such case shall be subject to all the provisions hereof. The cities of Petersburg, Lynchburg and Danville, or either of them, may be exempted from the operations of this act by ordinance of their respective councils.

Sec. 1906d. To protect persons, firms, corporations or unions of working men in the use of their labels, trade marks, terms, designs, devices, and forms of advertisements, and to provide for the registry thereof.

(1) Whenever any person, firm, corporation, or any association or union of working men has heretofore adopted or used, or shall hereafter adopt or use, any label, trade mark, term, design, device or form of advertisement for the purpose of designating, making known or distinguishing any goods, wares, merchandise, or other product of labor, as having been made, manufactured, produced, prepared, packed, or put on sale by such person, firm or corporation, or association, or union of working men, by a member or members of such association or union, and has filed the same for registry as hereinafter provided, it shall be unlawful to counterfeit or imitate such label, trade mark, term, design, device, or form of advertisement, or to use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trade mark, term, design, device or form of advertisement.

(2) Whoever counterfeits or imitates any such registered label, trade mark, term, design, device or form of advertisement, or knowingly and with intent to deceive sells, offers for sale, or in any way utters or circulates any counterfeit or imitation of any such registered label, trade mark, term, design, device or form of advertisement, or knowingly and with intent to deceive keeps or has in his possession, with the intent that the same shall be sold or disposed of, any goods, wares, merchandise, or other product of labor to which or on which any such counterfeit or imitation is printed, painted, stamped or impressed, or knowingly, and with intent to deceive, knowingly sells or disposes of any goods, wares, merchandise or other product of labor contained in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed,

painted, stamped or impressed, or knowingly, and with intent to deceive, keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise, or other product of labor in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed, shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than three months. All such applications for registry shall be made on forms prescribed by the Secretary of the Commonwealth, and any person applying to the Secretary of the Commonwealth for a certificate of registry of any label, trade mark, term, a copy, fac-simile or counterpart thereof.

(3) Every such person, firm, corporation, association or union that has heretofore adopted or used, or shall hereafter adopt or use, a label, trade mark, term, design, device or form of advertisement, as provided in section one of this act, may file the same for registry in the office of the Secretary of the Commonwealth by leaving six copies, counterparts or fac-similes thereof, with the said secretary, and by filing herewith a sworn application specifying (1) the name or names of the person, firm, corporation, association or union on whose behalf such label, trade mark, term, design, device, or form of advertisement, shall be filed; (2) the class of merchandise and the description of the goods to which it has been, or is intended to be appropriated, stating that the party so filing, or on whose behalf such label, trade mark, term, design, device, or form of advertisement, shall be filed, has the right to use the same; (3) that no other person, firm, association, union or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive; and (4) that the fac-simile or counterparts filed therewith are true and correct. There shall be paid for such filing and registry to the Secretary of the Commonwealth a fee of two dollars and fifty cents. Said secretary shall deliver to such person, firm, corporation, association or union so filing, or causing to be filed, any such label, trade mark, term, design, device or form of advertisements, so many duly attested certificates of the registry of the same as such person, firm, corporation, association or union may apply for, for each of which certificates said secretary shall receive a fee of two dollars and fifty cents. Any such certificate or registry shall in all suits and prosecutions under this act be sufficient proof of the adoption and registry of such label, trade mark, design, device or form of advertisement. Said Secretary of the Commonwealth shall not record for any person, firm, corporation, union or association any label, trade mark, term, design, device or form of advertisement that would probably be mistaken for any label, trade mark, term, design, device, or form of advertisement heretofore filed by or on behalf of any other person, firm, corporation, union or association.

(4) Any person who shall for himself, or on behalf of any other person, firm, corporation, association or union, procure the filing and registry of any label, trade mark, term, design or form of advertisement in the office of the Secretary of the Commonwealth, under the provisions of this act, by making any false or fraudulent representations or declaration, verbally, or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such filing, to be recovered by or on

behalf of the party injured thereby, in any court having jurisdiction, and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding three months.

(5) Every such person, firm, corporation, association or union which has adopted and registered a label, trade mark, term, design, device or form of advertisement, as aforesaid, may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, and all courts of competent jurisdiction shall grant injunctions to restrain such manufacture, use, display or sale, as may be by the said court deemed just and reasonable, and shall require the defendants to pay to such person, firm, corporation, association or union all profits derived from such wrongful manufacture, use, display or sale; and such court shall also order that any such counterfeits or imitations in the possession, or under the control, of any defendant in such cause, be delivered to an officer of the court, or to the complainant, to be destroyed.

(6) Every person who shall use or display the genuine registered label, trade mark, term, design, device or form of advertisement of any such person, firm, corporation, association or union in any manner, not being authorized so to do by such person, firm, corporation, union or association, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not more than three months, or by a fine of not more than one hundred dollars. In all cases where such association or union is not incorporated, suits under this act may be commenced and prosecuted by an officer or member of the association or union on behalf of and for the use of such association or union.

(7) Any person or persons who shall in any way use the name or seal of any such person, firm, corporation, association or union, or officer thereof, in and about the sale of goods, or otherwise, not being authorized to so use the same, shall be guilty of a misdemeanor, and shall be punishable by imprisonment for not more than three months, or by a fine of not more than one hundred dollars.

Sec. 2475. Lien for work done and materials furnished by artisans, mechanics, lumber dealers, and others.

All artisans, builders, mechanics, lumber dealers, and other persons performing labor about, or furnishing materials for, the construction, repair, or improvement of any building or structure, permanently annexed to the freehold, whether they be general contractors or sub-contractors, shall have a lien, if perfected as hereinafter provided, upon such building or structure, and so much land therewith as shall be necessary for the convenient use and enjoyment of the premises, for the work done and materials furnished. But where the claim is for repairs only, no lien shall attach to the property repaired unless the said repairs were ordered by the owner of the property or his agent. Nor shall any lien attach under this section to a railroad track or bed, or any part thereof, by reason of work and labor done thereon, or materials furnished for the same.

Sec. 2476. Perfection of lien by general contractor; mechanic's lien record; notice of lien.

A general contractor, in order to perfect the lien given him by the preceding section, shall at any time after the work is done and the materials furnished by him and before the expiration of sixty days from the

time such building, structure or railroad is completed, or the work thereon otherwise terminated, file in the clerk's office of the county or corporation in which the building, structure or railroad, or any part thereof is, or in the clerk's office of the chancery court of the city of Richmond, if the said building, structure or railroad, or any part thereof, is within the corporation limits of the said city, an account showing the amount and character of the work done or materials furnished, the prices charged therefor, the payments made, if any, and the balance due, verified by the oath of the claimant or his agent, with a statement attached declaring his intention to claim the benefit of said lien, and giving a brief description of the property on which he claims the lien. It shall be the duty of the clerk, in whose office such account or statement shall be filed as hereinbefore provided, to record the same in a book to be kept for that purpose, called the "Mechanic's Lien Record," and to index the same in the name as well of the claimant of the lien as of the owner of the property, and from the time of such filing all persons shall be deemed to have notice thereof.

Sec. 2477. Perfection of lien by sub-contractor; extent of lien.

Any sub-contractor, in which term is included all contractors and laborers and mechanics and those furnishing materials, as provided in section 2475 of the Code, and acts amendatory thereof, other than general contractors, in order to perfect the lien given him by section 2475, shall comply with the preceding section; and, in addition, give notice in writing to the owner of the property or his agent of the amount and character of his claim. But the amount for which a lien may be perfected under this section shall not exceed the amount in which the owner is indebted to the general contractor at the time the notice is given or shall thereafter become indebted to said general contractor upon his contract with said general contractor for said structure or building, or railroad.

Sec. 2478. What inaccuracies not to effect lien.

No inaccuracy in the account filed, or in the description of the property to be recovered by the lien, shall invalidate the lien, if the property can be reasonably identified by the description given and the account conform substantially to the requirements of the two preceding sections, and is not wilfully false.

Sec. 2499. How owner made personally liable to sub-contractor.

Any sub-contractor may give notice in writing to the owner or his agent, stating the nature and character of his contract and the probable amount of his claim, and if such sub-contractor shall at any time after the work done or material furnished by him, and before the expiration of thirty days from the time such building or structure is completed or the work thereon otherwise terminated, furnish the owner thereof or his agent and also the general contractor with a correct account, verified by affidavit, of his claim against the general contractor for the work done or materials furnished and of the amount due, the owner shall be personally liable to the claimant for the amount due to said contractor by said general contractor; provided, the same does not exceed the sum in which the owner is indebted to the general contractor at the time the notice is given, or may thereafter become indebted by virtue of his contract with said general contractor.

Sec. 2480. When owner may pay sub-contractor; if general contractor dispute account of sub-contractor, how settled.

If the account furnished under the preceding section be approved by the general contractor, or if after ten days' notice to him of the filing of the said account with the owner, such contractor shall fail to file with the owner any objection in writing to the said account, in either case the owner may pay the amount of the account to the sub-contractor, and shall then be entitled to credit for the amount so paid upon whatever may be due by him to the general contractor. If the general contractor dispute the correctness of the account furnished to the owner by the sub-contractor at any time before the same is paid, the parties may have the amount of such disputed claim summarily adjudicated and settled by arbitrators, selected, one by the general contractor and one by the claimant, or by an umpire selected by the arbitrators, in the case of their disagreement; and upon the failure or refusal of either of the said parties to select an arbitrator, then the matter in controversy shall be settled by an action at law; and upon the payment by the owner or his agent of the amount ascertained to be due by the award of the arbitrators, or by action at law, he shall be released from all liability, if any there be, to the said sub-contractor and entitled to a credit against the general contractor for the amount so paid. The cost of arbitration shall be borne and paid as the arbitrators may adjudge and award in each case.

Sec. 2481. Limitation of lien.

No suit to enforce any lien perfected under the six preceding sections of this chapter shall be brought after six months from the time when the whole amount covered by such lien has become payable; provided, however, that the filing of a petition to enforce any such lien in any suit wherein such petition may be properly filed shall be regarded as the institution of a suit under this section.

Sec. 2482. Lien of general contractor to inure to benefit of sub-contractor.

The perfected lien of a general contractor on any building or structure shall inure to the benefit of any sub-contractor who has not perfected a lien on such building or structure; provided, such sub-contractor shall give written notice of his claim against the general contractor to the owner or his agent before the amount of such lien is actually paid off or discharged.

Sec. 2482a. To protect sub-contractors, supply men, and laborers.

No assignment or transfer of any debt, or any part thereof, due or to become due to a general contractor by the owner for the construction, erection, or repairing of any building, structure or railroad for such owner shall be valid or enforceable in any court of law or equity by any legal process or in any other manner by the assignee of any such debt unless and until the claims of all sub-contractors, supply men and laborers against such general contractor for labor performed and materials furnished in and about the construction, erection and repairing of such building, structure or railroad shall have been satisfied; provided, that if such sub-contractors, supply men and laborers shall give their assent in writing to such assignment it shall be thereby made valid as to them, but the payment or appro-

priation of such assignment by the owner without such assent in writing shall not protect such owner from the demands of such sub-contractors, supply men and laborers to the extent of such assignment.

No debt or demand, or any part thereof, due or to become due by the owner of any building, structure or railroad to a general contractor for the construction, erection or repairing of such building, structure or railroad, shall be subject to the payment of any debt or the lien of any judgment, writ of fieri facias, or any garnishee proceeding obtained or sued out upon any debt due such general contractor, which shall have been contracted in any other manner or for any other purpose than in the construction, erection or repairing of such building, structure or railroad for such owner unless and until the claims due by such general contractor to all sub-contractors, supply men and laborers for the materials furnished and labor performed in and about the construction, erection or repairing of such building, structure or railroad shall have been paid. (1895-'06, p. 379.)

Sec. 2483. Extent of lien where owner has less than a fee in the land in enforcement of liens; what preference is given to the mechanic's lien.

If the person who shall cause such building or structure to be erected or repaired owns less than a fee simple estate in such land, then only his interest therein shall be subject to said liens. No lien or incumbrance upon the land created before the work was commenced or materials furnished shall operate upon the building or structure erected thereon, or materials furnished for and used in the same, until the lien in favor of the person doing the work or furnishing the materials shall have been satisfied; nor shall any lien or incumbrance upon the land created after the work was commenced or materials furnished operate on the land, or such building or structure until the lien in favor of the person doing the work or furnishing the materials shall have been satisfied. And in the enforcements of the liens acquired under the previous sections of this chapter, any lien or incumbrance created on the land before the work was commenced or materials furnished shall be preferred in the distribution of the proceeds of sale only to the extent of the value of the land estimated, exclusive of the buildings or structures, at the time of sale, and the residue of the proceeds of sale shall be applied to the satisfaction of the liens provided for in the previous sections of this chapter.

Sec. 2484. How liens are enforced; no priority except, etc.

The liens created and perfected under the preceding sections of this chapter may be enforced in a court of equity. When a suit is brought for the enforcement of any such lien against the property bound thereby, all parties entitled to such liens upon the said property, or any portion thereof, may file petitions in such suit asking for the enforcement of their respective liens, to have the same effect as if an independent suit were brought by each claimant. There shall be no priority among them, except that the lien of a sub-contractor shall be preferred to that of his general contractor.

Sec. 2485. Lien of employees, and so forth, of transportation companies, and so forth, on franchises and property of company.

All conductors, brakemen, engine drivers, firemen, captains, stewards, pilots, clerks, depot and office agents, storekeepers, mechanics, traveling

representatives, or laborers, and all persons furnishing railroad iron, engines, cars, fuel, and all other supplies necessary to the operation of any railway, canal, or other transportation company, and all clerks, mechanics, traveling representatives, and laborers who furnish their services or labor to any mining or manufacturing company, whether such railway, canal, or other transportation or mining or manufacturing company be chartered under or by the laws of this State, or be chartered elsewhere, and be doing business within the limits of this State, shall have a prior lien on the franchises, gross earnings, and on all the real and personal property of said company which is used in operating the same to the extent of the moneys due them by said companies for such wages or supplies, and no mortgage, deed of trust, sale, hypothecation, or conveyance executed since the twenty-first day of March, eighteen hundred and seventy-seven, shall defeat or take precedence over said lien; provided, however, that the lien secured by this provision to parties furnishing supplies shall be subsequent to that due to clerks, mechanics, and laborers for services furnished as aforesaid; and provided, that if any person entitled to a lien as well under section twenty-four hundred and seventy-five as under this section shall perfect his lien given by either section, he shall not be entitled to the benefit of the other; and provided, also, that no right to, or remedy upon, a lien which has already accrued to any person shall be extended, abridged, or otherwise affected hereby. (1876-'7, p. 188; 1878-'9, p. 352; 1891-'2, p. 362; 1902-'3-'4, p. 624.)

Sec. 2486. How perfected; how enforced.

No person shall be entitled to the lien given by the preceding section unless he shall, within ninety days after such supplies are furnished, or service rendered, file in the clerk's office of the court of the county or corporation in which is located the chief office in this State of the company against which the claim is, or in the clerk's office of the chancery court of the city of Richmond, which such office is in said city, a memorandum of the amount and consideration of his claim, verified by affidavit, which memorandum the said clerk shall forthwith record in the deed book and index the same in the name of the said claimant, and also in the name of the company against which the claim is. Any such lien may be enforced in a court of equity.

Sec. 2487. Assignee's rights.

Any assignee of such claim may file the memorandum and make the oath required by the preceding section, and shall have the same rights as his assignor.

Sec. 2488. Lien of mechanics for repairs.

Every mechanic who shall alter or repair any article of personal property at the request of the owner of such property shall have a lien thereon for his just and reasonable charges therefor, and may retain possession of such property until such charges are paid.

Sec. 2844. Public holidays; when bills, notes, etc., otherwise presentable on any such holiday or on Saturday to be presentable.

The first day of January, the nineteenth day of January (known as Lee-Jackson day), the twenty-second day of February, the thirtieth day of May (Confederate Memorial Day), the fourth day of July, the first

Monday in September (known as Labor Day), the Tuesday next following the first Monday in November (known as election day), the twenty-fifth day of December, and any day appointed or recommended by the Governor of this State or the President of the United States as a day of thanksgiving or fasting and prayer, or other religious observance, are hereby designated and established, and shall be considered as public holidays, and every Saturday after twelve o'clock noon is hereby designated and established, and shall be considered a half-holiday as to the transaction of all business, except as to maturity, the presentment for acceptance or payment and the protesting of negotiable instruments, as hereinafter provided. Whenever the first day of January, the nineteenth day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, or the twenty-fifth day of December shall fall on a Sunday, the Monday next following shall be public holiday, with the same effect as if the days above named, respectively, had fallen on the said Monday; provided, however, that no contract made, instrument executed, or act done on any of said public holidays, or on any Saturday, whether before or after twelve o'clock noon, shall be thereby rendered invalid, and that nothing in this act contained shall be construed to prevent or invalidate the entry, issuance, service or execution of any writ, summons, confession, judgment, order or decree, or other legal process whatever, or the session or the proceedings of any court or judge on any of the said public holidays or Saturdays, either before or after twelve o'clock noon; nor to prevent any bank, banker, banking corporation, firm, or association from keeping their doors open and transacting any lawful business on any day of the said public holidays or Saturdays.

(2) All days now or hereafter designated or established as public holidays in this State, and the entire day of every Saturday, shall, for all purposes whatsoever as regard the maturity, the presenting for acceptance or payment, and of protesting and giving notice of the dishonor of any bill of exchange, draft, check, negotiable note, or other negotiable instrument, made on or after the day on which this act shall take effect, constitute, and shall be considered and treated as public holidays, and as non-secular and non-business days, and shall be so considered and construed within the meaning of the act of the General Assembly approved on the third day of March, eighteen hundred and ninety-eight, known as the negotiable instrument law; and every such bill of exchange, draft, check, negotiable note, or other negotiable instrument, which would otherwise be presentable for acceptance or payment on any of the said holidays or Saturdays, or on a Sunday, shall be deemed to be presentable for acceptance or payment on the next succeeding secular or business day. And no person, firm, corporation or association or company shall be deemed guilty of any neglect or omission of duty, nor incur any liability in not presenting for acceptance or payment, or in not collecting, or in not protesting, or in not giving notice of non-acceptance, non-payment or dishonor of any instrument, whether negotiable or non-negotiable, made on or after the day on which this act shall take effect on any of the said public holidays, or on any Saturday or Sunday; provided, however, that notice of the non-acceptance, non-payment, dishonor or protest of any such instru-

ment as is hereinbefore specified may be given on any such holiday, Saturday or Sunday, with the same effect as if it were a secular or business day.

(3) Nothing contained in this act shall affect the liabilities or duties of any person in respect to any bill of exchange, draft, check, negotiable note or other negotiable instrument made, indorsed or accepted before the day on which this act shall take effect; but the duties and liabilities of any person in relation to all such instruments shall be the same as if this act had not been passed.

(4) An act entitled "An act to designate and establish certain days as public holidays and to establish and declare Saturday after twelve o'clock noon a half-holiday as regards the transaction of business generally, with exceptions specified in this act," approved July twenty-ninth, nineteen hundred and two, and all acts and parts of acts inconsistent herewith, are hereby repealed, except that nothing herein contained shall be deemed or construed to be intended to repeal any of the provisions of the act of Assembly approved March third, eighteen hundred and ninety-eight, known as the negotiable instrument law; and provided further, that nothing herein contained shall be construed to authorize the closing of the clerk's office of any court in this State on any other day than that now provided by law.

Sec. 2963. Lien against vessels in certain cases.

If any person has any claim against the master or owner of any steamboat or other vessel, raft or river craft, or against any steamboat or other vessel, raft or river craft, found within the jurisdiction of this State, for materials or supplies furnished or provided, or for work done for, in, or upon the same, or for wharfage, salvage, pilotage, or for any contract for transportation of, or any injury done to, any person or property by such steamboat or other vessel, raft or river craft, or by any person having charge of her, or in her employment, such person shall have a lien upon such steamboat or other vessel, raft or river craft, for such materials or supplies furnished, work done, or services rendered, wharfage, salvage, pilotage, and for such contract or injury as aforesaid; and may, in a pending suit, sue out of the clerk's office of the circuit court of the county, or the circuit or corporation court of the corporation, in which such steamboat or other vessel, raft or river craft may be found, an attachment against such steamboat or other vessel, raft or river craft, with all her tackle, apparel, furniture, and appurtenances, or against the estate of such master or owner. Any attachment may be sued out under this section for a cause of action that may have arisen without the jurisdiction of this State, as well as within it, if the steamboat or other vessel, raft or river craft be within the jurisdiction of this State at the time the attachment is sued out or executed.

Sec. 3538. Poor persons allowed services from counsel and officers, without fees or costs.

A poor person may be allowed by a court to sue or defend a suit therein without paying fees or costs; whereupon he shall have, from any counsel whom the court may assign to him, and from all officers, all needful service and process, without any fees to them therefor, except what may be included in the costs recovered from the opposite party.

Sec. 3630. Exemption to householder from liability for his debts of property of the value of two thousand dollars; in what cases not allowed.

Every householder or head of a family residing in this State shall be entitled, in addition to the property or estate which he is entitled to hold exempt from levy, distress or garnishment under section thirty-six hundred and fifty, thirty-six hundred and fifty-one and thirty-six hundred and fifty-two, to hold exempt from levy, seizure, garnishment or sale under any execution, order or process issued on any demand for a debt or liability on contract hereafter contracted, his real and personal property, or either, to be selected by him, including money and debts due him, to the value of not exceeding two thousand dollars; provided, that such exemption shall not extend to any execution, order, or other process issued on any demand in the following cases:

First. For the purchase price of said property or any part thereof. If the property purchased and not paid for be exchanged for or converted into other property by the debtor, such last named property shall not be exempted from the payment of such unpaid purchase money under the provisions of this section.

Second. For services rendered by a laboring person or mechanic.

Third. For liabilities incurred by any public officer or officer of a court, or any fiduciary, or any attorney at law for money collected.

Fourth. For a lawful claim for any taxes, levies, or assessments accruing after the first day of June, eighteen hundred and sixty-six.

Fifth. For rent.

Sixth. For the legal or taxable fees of any public officer or officer of a court.

Seventh. Said exemption shall not be claimed or held in a shifting stock of merchandise, or in any property the conveyance of which, by the homestead claimant, has been set aside on the ground of fraud or want of consideration.

But this act shall not invalidate any homestead exemption heretofore claimed under the provisions of the former Constitution, or impair in any manner the right of any householder or head of a family existing at the time that the present Constitution went into effect, to select the exemption, or any part hereof, to which he was entitled under the former Constitution; provided, that such right, if hereafter exercised, be not in conflict with the exemption set forth in sections one hundred and ninety and one hundred and ninety-one of the present Constitution.

But no person who has selected and received the full exemption allowed by the former Constitution shall be entitled to select an additional exemption under the present Constitution; and no person who has selected and received part of the exemption allowed by the former Constitution shall be entitled to select an additional exemption beyond the difference between the value of such part and a total valuation of two thousand dollars. (Acts 1869-'70, p. 198; 1902-'3-'4, p. 868.)

Sec. 3631. How exemption of real estate secured.

In order to secure the benefit of the exemption of real estate under the preceding section, the householder shall, by a writing signed by him and duly admitted to record, to be recorded as deeds are recorded, in the

county or corporation wherein such real estate, or any part thereof, is, declare his intention to claim such benefit, and select and set apart the real estate to be held by him as exempt, and describe the same with reasonable certainty, affixing to the description his cash valuation of the estate so selected and set apart. Equitable, as well as legal estates, may be so selected and set apart.

Sec. 3638. Householder may, in lieu of real estate, set apart the exemption in personal estate.

If the householder does not set apart any real estate as before provided, or if what he does or has to set apart is not of the value of two thousand dollars, he may (in addition to the property or estate which he is entitled to hold exempt under sections thirty-six hundred and fifty, thirty-six hundred and fifty-one and thirty-six hundred and fifty-two), in the first case, select and set apart, to be held by him as exempt under section thirty-six hundred and thirty, so much of his personal estate as shall not exceed in value the sum of two thousand dollars; and, in the latter case, personal estate, the value of which, when added to the value of the real estate set apart, does not exceed the said sum.

Sec. 3650. The articles which a householder, in addition to the foregoing exemption, may hold exempt from levy or distress.

In addition to the estate, not exceeding in value two thousand dollars, which every householder residing in this State shall be entitled to hold exempt, as provided in the preceding sections of this chapter, he shall also be entitled to hold exempt from levy or distress the following articles, or so much or so many thereof as he may have to be selected by him or his agents, except that the live stock so exempted under this and the following section of this chapter shall not be exempt from any levy or distress made under the provisions of chapter 93 of this Code:

(1) The family Bible.

(2) Family pictures, school books, and library for the use of family, not exceeding in all one hundred dollars in value.

(3) A seat or pew in any house or place of public worship.

(4) A lot in a burial ground.

(5) All necessary wearing apparel of the debtor and his family; all beds, bedsteads, and bedding necessary for the use of such family, and all stoves and appendages put up and kept for the necessary use of the family, not exceeding three.

(6) One cow and her calf until one year old, one horse, six chairs, six plates, one table, six knives, six forks, one dozen spoons, two dishes, two basins, one pot, one oven, six pieces of wooden or earthenware, one loom and its appurtenances, one safe or press, one spinning wheel, one pair of cards, one axe, two hoes, ten barrels of corn, or, in lieu thereof, twenty-five bushels of rye or buckwheat, five bushels of wheat, or one barrel of flour, twenty bushels of potatoes, two hundred pounds of bacon or pork, three hogs, ten dollars in value of forage or hay, one cooking stove and utensils for cooking therewith, and one sewing machine; and, in the case of a mechanic, the tools and utensils of his trade, not exceeding one hundred dollars in value; and, in case of an oysterman or fisherman, his boat and tackle, not exceeding two hundred dollars in value. If the boat

and tackle exceed two hundred dollars in value, the same shall be sold, and out of the proceeds the oysterman or fisherman shall first receive two hundred dollars in lieu of such boat and tackle.

Sec. 3652. What wages of a laboring man who is a householder is exempt.

Wages owing to a laboring man being a householder, not exceeding fifty dollars per month, shall also be kept from distress, levy, or garnishment.

Sec. 3652a. Protection of laboring men who are householders against being deprived of the exemption under section 3652.

It shall be unlawful for any person to institute, or permit to be instituted, proceedings in his own name, or in the name of any other person, or to assign or transfer, either for or without value, any claim for debt or liability of any kind, held by him against a resident of the State, who is a laboring man and a householder, for the purpose of having payment of the same, or any part thereof, enforced out of the wages exempted by section thirty-six hundred and fifty-two of the Code of Virginia, by proceedings in attachment or garnishment, in courts or before justices of the peace in any other State than in the State of Virginia, or to send out of this State by assignment, transfer, or in any other manner whatsoever, either for or without value, any claim or debt against any resident thereof for the purpose or with the intent of depriving such person of the right to have his wages exempt from distress, levy or garnishment according to the provisions of section thirty-six hundred and fifty-two of the Code of Virginia. And the person instituting such suit, or permitting such suit to be instituted, or sending, assigning, or transferring any such claim or debt for the purpose or with the intent aforesaid, shall, upon conviction thereof, be fined not less than ten dollars nor more than one hundred dollars, and shall in addition thereto be liable in an action of debt to the person from whom payment of the same, or any part thereof, shall have been enforced by attachment or garnishment, or otherwise, elsewhere than in the State of Virginia, for the full amount, payment whereof shall have been so enforced, together with interest thereon, and the cost of the attachment or garnishee proceedings, as well as the costs of said action.

Sec. 2. The amount recovered in such action shall stand on the same footing with the wages of the plaintiff under section thirty-six hundred and fifty-two of the Code, and shall also be exempt and free from any and all liability of the plaintiff to the defendant in the way of set-off or otherwise.

Sec. 3. The fact that the payment of a claim or debt against any person entitled to the exemption provided for in section thirty-six hundred and fifty-two of the Code has been enforced by legal proceedings in some State other than the State of Virginia, in such manner as to deprive such person to any extent of the benefit of such exemption, shall be prima facie evidence that any resident of this State, who may at any time have been owner or holder of said claim or debt, has violated this law.

Sec. 3652b. To protect all payments made to the holder of any policy in any accident company, sick benefit company, or any company of like kind from levy or distress for any debt due by the insured.

The payments made in weekly or monthly installments to the holder of any policy of insurance in any accident company, sick benefit company, or any company of like kind, shall not be subject to the lien of any attachment, garnishment proceedings, writ of fieri facias, or to levy or to distress in any manner for any debt due by the holder of such policy. (1895-'6, p. 700.)

Sec. 3652c. To exempt the wages of minors from garnishment process.

The wages of a minor shall not be liable to garnishment or otherwise liable to the payment of the debts of parents. (1897-'8, p. 599.)

Sec. 3652d. Garnishment of and levy of execution on wages and salaries of the State officials, clerks and employees.

That the wages and salaries of all officials of this State, their clerks, and all employees of this State, shall be subject to garnishment or execution upon any judgment rendered against them; provided, said officials, clerks, and employees are not exempt from garnishment or levy under chapter one hundred and seventy-eight of the Code of Virginia. Whenever the salary or wages of such officials, clerks, or employees as above mentioned shall be garnished under this act, the process shall be such as is usual in the other cases of garnishment, and shall be served on the judgment debtor and on the Auditor of Public Accounts, or other officer through whom the judgment debtor's salary or wages is paid, and upon such service the Auditor or such other officer shall, on or before the return day of process, transmit to the clerk of the court or justice issuing the process a certificate showing the amount due from the State to such judgment debtor, up to the return day of the process, which amount said Auditor shall hold subject to order of the court or justice issuing the process. Said certificate shall be evidence of all facts therein stated, unless the court or justice direct the deposition of the Auditor, or such other officer through whom the judgment debtor's salary or wages is paid, be taken, in which event the deposition of said Auditor or such other officer shall be taken in his office and returned to the clerk of the court in which the garnishment is, or to the justice issuing the process, just as other depositions are returned, and in no such case shall the Auditor or other such officer be required to leave his office to testify. In all proceedings under this act, if the judgment be for the plaintiff, the amount found to be due the judgment debtor by the State shall be paid as directed by the court or justice. (1899-'00, p. 546; 1902-'3-'4, p. 136.)

Sec. 3652e. Garnishment of and levy of execution on wages and salaries of all city, town or county officials, clerks and employees.

The wages and salaries of all officials, clerks, and employees of any city, town, or county shall be subject to garnishment or execution upon any judgment rendered against them; provided, such officials, clerks, and employees are not exempt from garnishment or levy under chapter one hundred and seventy-eight of the Code of Virginia.

Sec. 3652f. Who are officers and employees of cities, towns and counties.

All officers, clerks, and employees who hold their office by virtue of authority of the General Assembly of Virginia, or by virtue of city, town, or county authority, whether by election or appointment, and who receive compensation for their services from the moneys of such city, town, or county, shall, for the purpose of garnishment, be deemed to be, and are, employees of such city, town, or county.

Sec. 3653. What articles, on the death of householder, vest absolutely in his widow, minor children, and unmarried daughters.

Upon the death of a householder, leaving a widow, minor children, or daughters who have never married, there shall be vested in them, or such of them as there may be, absolutely and exempt from sale for funeral expenses, or debts of the decedent, or charges of administration on his estate, such of his property as would, if he were alive and a householder, be exempt under section thirty-six hundred and fifty from levy or distress for his debts.

Sec. 3654. Articles are not exempt from taxes or levies or for their purchase price.

The exemption under the four preceding sections shall not extend to distress for State, county, or corporation taxes or levies; nor shall the exemptions under sections thirty-six hundred and fifty, thirty-six hundred and fifty-one, and thirty-six hundred and fifty-three extend to levy or distress for the purchase price of any property therein mentioned, nor for fines and damages, or either, arising from trespass by animals under section twenty hundred and forty-two as to such animals so trespassing.

Sec. 3657. Word "householder" construed.

The word "householder" used in this chapter shall be equivalent to the expression, "householder, or head of a family," and the term "laboring man" shall be construed to include all householders who receive wages for their services.

Sec. 3657b. To regulate the hours of labor in factories where females and children under fourteen years of age are employed as operatives.

No female and no child under fourteen years of age shall work as an operative in any factory or in any manufacturing establishment in this State more than ten hours in any one day of twenty-four hours. All contracts made or to be made for the employment of any female, or of any child under fourteen years of age, as an operative in any factory or manufacturing establishment, to work more than ten hours in any one day of twenty-four hours, are and shall be void.

Any person having the authority to contract for the employment of persons as operatives in any factory or manufacturing establishment, who shall engage or contract with any female or any child under fourteen years of age to work as an operative in such factory or manufacturing establishment during more than ten hours in any one day of twenty-four hours, shall be guilty of a misdemeanor, and be fined not less than five nor more than twenty dollars.

Sec. 3657c. Protection of discharged employees.

No corporation, manufacturer, or manufacturing company doing business in this State, or any agent or attorney of such corporation, manufacturer, or manufacturing company, after having discharged any employee from the service of such corporation, manufacturer, or manufacturing company, shall wilfully and maliciously prevent, or attempt to prevent, by word or writing, directly or indirectly, such discharged employee from obtaining employment with any other person or corporation. For any violation of this section the offender shall be guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than one hundred nor more than five hundred dollars. But this section shall not be construed as prohibiting any corporation, manufacturer, or manufacturing company from giving in writing, on application from any other person or corporation. a truthful statement of the reason for such discharge.

Sec. 3657d. To secure operatives and laborers engaged in and about coal mines and manufactories the payment of wages at regular intervals and in lawful money.

(1) All persons, firms, companies, corporations, or associations in this Commonwealth engaged in mining coal, ore, or other minerals, or mining and manufacturing them, or either of them, or manufacturing iron or steel, or both, or any other kind of manufacturing, shall pay their employees as provided in this act.

(2) All persons, firms, companies, corporations, or associations engaged in the business aforesaid shall settle with their employees at least once in each month, and pay them the amounts due them for their work or services in lawful money of the United States, or by the cash order, as described and required in section three of this act; provided, that nothing herein contained shall affect the right of an employee to assign the whole or any part of his claim against his employer.

(3) (As amended by chapter 118, Acts of 1887-'88.) From and after the passage of this act it shall not be lawful for any person, firm, company, corporation, or association engaged in the business aforesaid, their clerk, agent, officer, or servant in this State, to issue for payment of labor any order or other payment whatever, unless the same purports to be redeemable for its face value in lawful money of the United States, made payable on demand, and without condition, to employee or bearer, bearing interest at legal rate, and redeemable by the person, firm, company, corporation, or association giving, making, or issuing the same; and any person, firm, company, corporation, or association engaged in the business aforesaid, their clerks, agents, officers, or servants, who shall issue for payment of labor any paper or order, other than the one herein specified, in violation of this section, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding one hundred dollars, in the discretion of the court.

(4) From and after the passage of this act it shall be unlawful for any person, firm, company, corporation or association engaged in mining or manufacturing, either or both, as aforesaid, and who shall likewise be either engaged or interested, directly or indirectly, in merchandising as owner or otherwise, in any money, per centum, profit or commission arising from

the sale of any such merchandise, their clerks, servants, officers or agents to knowingly and wilfully sell, or cause to be sold, to any employee any goods, merchandise or supplies whatever for a greater per centum of profit than merchandise and supplies of like character, kind, quality and quantity are sold to other customers buying for cash and not employed by them; and shall any person, or member of any firm, company, corporation or association, his or their clerk, agent or servant, violate this section of this act, they shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one hundred dollars, in the discretion of the court.

Sec. 3725. Obstructing or injuring canal, railroad, etc.; how punished. If any person maliciously obstruct, remove or injure any part of a canal or railroad, or any bridge or fixture thereof, or maliciously obstruct, tamper with or injure any machinery, engine, car or work thereof, or maliciously open, close, displace, tamper with, or injure any switch, switch point or switch lever, or signal of any railroad company, whereby the life of any passenger or other person on such canal or railroad is put in peril, he shall be confined in the penitentiary not less than two nor more than ten years; and, in the event of the death of any passenger or other person resulting from such malicious act, the person so offending shall be deemed guilty of murder, the degree to be determined by the jury.

If such act be committed unlawfully, but not maliciously, the person so offending shall, upon conviction thereof, be punished by confinement in the penitentiary not less than one nor more than three years; or, at the discretion of the jury, be confined in jail not to exceed twelve months, and fined not less than one hundred dollars nor more than five hundred dollars. (1877-'8, p. 292; 1893-'4, p. 662; 1895-'6, p. 937; 1904, p. 294.)

Sec. 3795a. Cruelty to children; their control and custody.

(1) It shall be unlawful for any person employing or having the custody of any child wilfully to cause or permit the life of such child to be endangered or the health of such child to be injured or wilfully to cause or permit such child to be placed in such a situation that its life or health may be endangered, or to cause or permit such child to be overworked, cruelly beaten, tortured, tormented or mutilated.

(2) It shall be unlawful for any person having the care, custody or control of any child under the age of fourteen years to sell, apprentice, give away, let or hire out, or otherwise dispose of such child to any person in or for the vocation or occupation, service or purpose of rope or wire walking, begging or peddling, or as a gymnast, contortionist, rider or acrobat in any place whatsoever, or for any obscene, indecent or immoral purpose, exhibition or practice whatsoever, or for or in any business, exhibition or vocation injurious to the health or morals or dangerous to the life or limb of such child, or cause, procure, encourage or permit any such child to engage therein.

(3) It shall also be unlawful for any person to take, receive, hire, employ, use, exhibit or have in custody any child under the age aforesaid for any of the purposes prohibited in the second section of this act.

(4) Any legally incorporated humane society or society for the prevention of cruelty to children, is hereby empowered to become the guardian of minor children in accordance with the general provisions of law appli-

cable to the guardianship of minors. The powers and duties of such society as guardian of minor children shall be exercised and performed by its officers and agents, and such society may adopt by-laws in relation thereto not inconsistent with the general provisions of law applicable to such guardianships.

(5) Whenever it shall be made to appear to any court having jurisdiction to appoint a guardian that any child under the age of fourteen years, by reason of orphanage or of the neglect, crime, drunkenness or other vice of parents or other persons having custody of such child, is growing up without education or salutary control and in circumstances exposing such child to lead a dissolute and vicious life, such court may order such child to be committed to the custody of any legally incorporated humane society or society for the prevention of cruelty to children, and such society is hereby authorized to receive such child into its custody and to provide for its care and education in some suitable family or institution of instruction; such society may discharge such child from its custody whenever, in the judgment of said society, the object of such commitment has been accomplished. At any time before such discharge said society may surrender such child to the custody of the court by which such commitment was ordered. In case of such surrender, or in case there is no such incorporated society willing to take the custody of such child, the said court may make such order as to the custody of such child as now is or may be provided by law in case of vagrant, truant, disorderly, pauper or destitute children; but nothing contained in this act shall be construed to oblige any such society to receive the custody of any child, nor to affect in any way the duty of any city or town to provide for any child having a legal settlement therein. Such court may at any time on the petition of such parent or any other person revoke its order and restore said child to its former custody or to the custody of any other person when it is made to appear that the welfare of said child will be thereby promoted. All proceedings under this section shall be by petition after notice to the person having custody of such child.

(6) Whenever any person or persons having the care or custody of any child within the age previously mentioned in this act shall engage, hire out or use such child in or for any business, exhibition, vocation, or purpose prohibited in this act, or shall permit the use of such child therefor, and shall be convicted of the same, the court or magistrate before whom such conviction is had, may, at his discretion, if he should think it desirable for the welfare of such child, deprive the person or persons so convicted of the custody of such child, and thereafter such child shall be deemed in the custody of the court, and thereupon such proceedings shall be had as to the commitment, custody, care and education of such child as are provided for in section five of this act.

(7) A person convicted under any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by fine not exceeding two hundred dollars, or by imprisonment in jail not exceeding twelve months, or both.

(8) In this act the word "person" shall be construed to include corporations, partnerships, companies and associations, as well as individuals. (1895-'6, p. 701.)

Note.—Many children are committed by the justices to the Children's Home Society of Virginia under the provisions of its charter. (1901-'2, p. 125.)

Sec. 3799. Violation of the Sabbath; how punished.

If any person, on a Sabbath day, be found laboring at any trade or calling, or employ his apprentices or servants in labor or other business except in household or other work of necessity or charity, he shall forfeit two dollars for each offense. Every day any servant or apprentice is so employed shall constitute a distinct offense. From any judgment heretofore or hereafter rendered under this section, the right of appeal shall lie to the defendant within ten days, to the corporation or hustings court of the city, or to the circuit court of the county, wherein said judgment appealed from is rendered; and when taken shall be proceeded in as appeals in misdemeanor cases. (1877-'8, p. 304; 1904, p. 79.)

Sec. 3800. Exception as to the Jews.

The forfeiture declared by the preceding section shall not be incurred by any person who conscientiously believes that the seventh day of the week ought to be observed as a Sabbath, and actually refrains from all secular business and labor on that day, provided he does not compel an apprentice or servant, not of his belief, to do secular work or business on a Sunday and does not on that day disturb any other person.

Sec. 3801. Transportation, etc., by railroads on Sunday prohibited.

No railroad company, receiver or trustee controlling or operating a railroad shall, by any agent or employee, load or unload, run or transport upon such road on a Sunday, any car, train of cars or locomotive, nor permit the same to be done by any such agent or employee, except where such cars, trains or locomotives are used exclusively for the relief of wrecked trains, or trains so disabled as to obstruct the main track of the railroad; or for the transportation of the United States mail; or for the transportation of passengers and their baggage; or for the transportation of live stock; or for the transportation of articles of such perishable nature as would be necessarily impaired in value by one day's delay in their passage; provided, however, that if it should be necessary to transport live stock or perishable articles on a Sunday to an extent not sufficient to make a whole train load, such train load may be made up with cars loaded with ordinary freight.

Sec. 3802. What time the word "Sunday" in the preceding section embraces.

The word "Sunday" in the preceding section shall be construed to embrace only that portion of the day between sunrise and sunset; and trains in transit, having started prior to twelve o'clock on Saturday night, may, in order to reach the terminus or shops of the railroad, run until nine o'clock the following Sunday morning, but not later.

Sec. 3803. Violations of section 3801; where and how punished.

Any railroad company, receiver or trustee violating the provisions of section thirty-eight hundred and one shall be deemed to have committed a separate offense in each county or corporation in which such car, train

of cars or locomotive shall run, or in which such car or train of cars shall be loaded or unloaded, and shall be fined not less than fifty nor more than one hundred dollars for each offense.

Sec. 3803a. To prohibit the loading and unloading of steamships' and steamboats' cargoes on a Sunday.

No steamboat company shall, by any agent or employee, load or unload on a Sunday any steamship or steamboat arriving at any port or landings on the bays, rivers or other waters of this State, or permit the same to be done by any such agent or employee, except where such steamship or steamboat is for the transportation of the United States mails, or for the transportation of passengers and their baggage, or for the transportation of through freight in transit, or of live stock, or of articles of such perishable nature as would be necessarily impaired in value by one day's delay in their passage; provided, that nothing in this act shall be construed as preventing any steamship or steamboat arriving at any port or landing on the bays, rivers and other waters of this State, nor its final point of destination, from unloading any and all freight intended for delivery at such intermediate port or landing, or from loading and taking on any and all freight intended for shipment from such intermediate port or landing, to the final destination of said steamship or steamboat.

Any steamship or steamboat company violating the provisions of this act shall be deemed to have committed a separate offense in each county or corporation in which said steamship or steamboat shall land and be unloaded, and shall be fined in a sum not less than fifty nor more than one hundred dollars for each offense.

Sec. 4125. Labor of convicts.

The convicts shall be kept to the hardest labor suitable to their sex and fitness, and such of them as need it instructed in some mechanical art.

Sec. 4130. Superintendent may employ convicts in working on public buildings, etc., at Richmond, etc.

The superintendent shall, at the discretion and under the direction of the Governor, employ them at Richmond, or elsewhere in the State, in improving, repairing or working on the public buildings, grounds and property, or executing work under contract with individuals or companies, or in cultivating ground for the use of the penitentiary.

Sec. 4131. May employ at Hollywood and Oakwood cemeteries.

He shall have authority to furnish to the Hollywood and Oakwood Memorial Association, from time to time, as may be necessary, a sufficient force of convict labor to keep in order the graves and sections wherein are buried the Confederate soldiers of the Army of Northern Virginia in said cemeteries.

Sec. 4132. Superintendent may employ them on grounds of State Agricultural Society.

The superintendent, at the request of the president of the Virginia State Agricultural Society, may, in his discretion, order the employment of convicts on the grounds of said society, imposing such conditions as he may deem proper

Sec. 4133. He may also furnish them to counties to work on county roads.

The superintendent shall have authority to furnish to any county in the State, upon the requisition of the board of supervisors of such county, approved by the judge of the circuit court, convicts whose term of service, at the time of the application for them, does not exceed five years, to work on the county roads under such regulations as the board of supervisors may prescribe in conformity with this chapter, and on such conditions as to safe-keeping as the superintendent and said board may agree upon; provided, that if the supervisors shall deem it best that the convicts furnished be employed on any turnpike or macadamized road in their county, the said board may so employ them, or arrange for their employment on such road with the company authorized to construct the same.

Sec. 4136. Superintendent may hire convicts to railroad companies, etc.

After providing for all demands under section forty-one hundred and thirty-three, the superintendent shall have authority to hire to any railroad company in this State, to which counties are subscribers, any convicts which may remain in the penitentiary, or who may be employed under existing contracts in any quarry or on any railroad to which counties are not subscribers, whose term of service at the time of application for them does not exceed ten years; provided, such contracts can be lawfully cancelled.

Chap. 228.—An act to require owners and agents of peanut cleaning establishments and cotton factories to furnish employees or operatives with a suitable sponge shield to protect such employee or operative from inhaling the dust or floating particles in the air, and fixing a penalty for failure so to do.

Approved March 12, 1908.

(1) Be it enacted by the General Assembly of Virginia, That every owner or agent of a peanut cleaning establishment operated for the purpose of cleaning peanuts, and every owner or agent operating a cotton factory in this Commonwealth be, and the same are hereby, required to furnish each employee or operative employed in any such peanut cleaning establishment or cotton factory, who may wish to use the same, a suitable sponge shield to protect such operative or employee from inhaling dust and floating particles in the air while employed in such peanut cleaning establishment or cotton factory. Said shield to be supplied by the owner or agent of said peanut cleaning establishment or cotton factory at actual cost and to be paid for by each operative or employee.

(2) Any owner or agent of said peanut cleaning establishment or cotton factory who shall fail to provide such shield upon application after a reasonable time shall be subject to a fine of not less than one dollar nor more than five dollars, and every day's failure to comply with such request shall constitute a separate offense.

Chap. 301. An act to regulate the employment of children in factories, mercantile establishments, workshops and mines in this Commonwealth, on and after March first, nineteen hundred and nine, and to prescribe penalties for violations of such regulations.

Approved March 13, 1908.

1. Be it enacted by the General Assembly of Virginia, That on and after March first, nineteen hundred and nine, no child under the age of thirteen years, and on after March first, nineteen hundred and ten, no child under the age of fourteen years, shall be employed, permitted or suffered to work in any factory, workshop, mercantile establishment, or mine in this Commonwealth; provided, this act shall not exclude any child over the age of twelve, who is an orphan, or who for any other reason is dependent on its own labor for support, nor any child or children whose parent or parents are invalids, and solely dependent upon the labor of such child or children for support; in either of which cases a certificate shall be obtained from the circuit court of the county, or corporation court of the city, or the judge thereof in vacation, or from the mayor of the city or town, or a justice of the peace of the magisterial district, as the case may be, in which such child or children reside, setting forth the fact that a necessity exists, and authorizing the employment of said child or children, and a copy of such permit shall be forwarded to the Commissioner of Labor within ten days from the granting thereof by the clerk of the court in which, or the officer by whom, such permit was granted.

Any owner, superintendent, overseer, foreman or manager, who shall knowingly employ or permit any child to be employed contrary to the provisions of this act, in any factory, workshop, mercantile establishment, or mine, with which he is connected, and any parent or guardian, who allows any such employment of his child or ward, shall upon conviction of such offense, be fined not less than twenty-five dollars nor more than one hundred dollars; provided, that as to fruit and vegetable canneries, and as to stores in the country and in towns of less than two thousand population, and country workshops not in the suburbs of a city, the law shall remain as if this act had not been passed. But nothing in this act shall prevent a parent from working his or her child in any factory, workshop, mercantile establishment, or mine, or other place owned or operated by said parent.

Any employment contrary to the provisions of this act shall be prima facie evidence of guilt, both as to the employer and the parent or guardian of the child so employed.

2. All acts and parts of acts that are or may be in conflict with the operation of this act on and after March the first, nineteen hundred and nine, are to that extent hereby repealed, said repeal to take effect as of March the first, nineteen hundred and nine.

Chap. 14.—An act in relation to certain proper sanitary arrangements to be provided in factories, workshops, mercantile establishments or offices and imposing penalties for failure to provide such arrangements.

Approved February 9, 1910.

1. Be it enacted by the General Assembly of Virginia, That every factory, in which five or more persons are employed, and every factory, workshop, mercantile or other establishment or office, in which two or more children, under eighteen years of age, or women are employed, shall be kept clean and free from effluvia arising from any drain, privy or nuisance,

and shall be provided with a sufficient number of proper water closets, earth closets or privies, and reasonable access shall be afforded thereto; and whenever two or more males and two or more females are employed together, a sufficient number of separate water closets, earth closets or privies shall be provided for the use of each sex, and plainly so designated; and no person shall be allowed to use a closet or privy which is provided for persons of the other sex; provided, in mercantile establishments and offices the provisions of this section shall not apply so far as toilets are concerned, if separate toilets are within reasonable access.

2. The owner, lessee or occupant of any premises which are used as described in the preceding section shall make the changes necessary to conform thereto. If such changes are made upon the order of the Commissioner of Labor by the occupant or lessee of the premises, he may, within thirty days after the completion thereof, bring an action against any other person who has an interest in such premises, and may recover such proportion of the expense of making such changes as the court may adjudge should be equitably borne by such other interested party defendant.

3. If it appears to the Commissioner of Labor that any act, neglect or fault in relation to any drain, water closet, earth closet, privy, ash pit, water supply, nuisance or other matter in a factory or workshop included under the provisions of section one is punishable or remediable under any law relative to the preservation of the public health, but not under the provisions of this chapter, he shall give notice in writing thereof to the board of health of the city or county in which such factory or workshop is situated, or to the State Health Commissioner, and such board of health or State Health Commissioner shall thereupon inquire into the subject of the notice and enforce the laws relative thereto.

4. A criminal prosecution shall not be instituted against a person for a violation of the provisions of sections one and two until four weeks after notice in writing by the Commissioner of Labor of the changes necessary to be made to comply with the provisions of said sections has been sent by mail or delivered to such person, nor if such changes shall have been made in accordance with such notice. A notice shall be sufficient under the provisions of this section if given to one member of a firm, or to the clerk, cashier, secretary, agent or any other officer who has charge of the business of a corporation, or to its attorney; and in case of a foreign corporation, to the officer who has charge of such factory or workshop; and such officer shall be personally liable for the amount of any fine if a judgment against the corporation is returned unsatisfied.

5. Any person, firm or corporation who shall violate the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, be subject to a fine of not less than five nor more than twenty-five dollars, and each day of such violation may constitute a separate offense.

Chap. 155.—An act to regulate employment bureaus or agencies and to provide penalties for violation of same.

Approved March 14, 1910.

1. Be it enacted by the General Assembly of Virginia,

§ 1. Every person, firm or corporation who shall agree or promise, or

who shall advertise through the public press, or by letter, to furnish employment or situations to any person or persons, and in pursuance of such advertisement, agreement or promise, shall receive any money, personal property or other valuable thing whatsoever, and who shall fail to procure for such person or persons acceptable situations or employment as agreed upon, within the time stated, or agreed upon, or if no time be specified, then within a reasonable time shall, upon demand, return all such money, personal property or valuable consideration of whatever character, except an amount, not to exceed one dollar, to be charged as a filing fee.

§ 2. It shall be unlawful for any person, firm or corporation to receive any application for employment from, or enter into any agreement with, any person to furnish or procure for said person any employment, unless there is delivered to any such person making such application or contract at the time of the making thereof, a true and full copy of such application or agreement, which application or agreement shall specify the fee or consideration to be paid by the person seeking employment.

§ 3. It shall be unlawful for any person, firm or corporation, or any person employed or authorized by such person, firm or corporation to hire or discharge employees, to receive any part of any fee or any percentage of wages or any compensation of any kind whatever, that is agreed upon to be paid by any employee or said person, firm or corporation to any employment bureau or agency for services rendered to any such employee in procuring for him employemnt with said person, firm or corporation.

§ 4. The Commissioner of the Bureau of Labor and Industrial Statistics, or his deputy, shall have authority to examine at any time the records, books and any papers relating in any way to the conduct of any employment agency or bureau within the State, and must investigate any complaint made against any such employment agency or bureau, and if any violations of law are found he shall at once file, or cause to be filed, an information against any person, firm or corporation guilty of such violation of law.

§ 5. Any person, firm or corporation violating any of the provisions of this act, or who shall refuse access to records, books or other papers relative to the conduct of such agency or bureau, to any person having authority to examine same, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or imprisonment not exceeding thirty days, or both such fine and imprisonment.

Chap. 189.—An act to amend and re-enact an act approved January 12, 1898, entitled an act to require employers of females in stores, shops, offices or manufactories, as clerks, operatives or helpers in any business, trade or occupation, to provide seats for such female employees, and providing a penalty for failure or refusal to provide such seats.

Approved March 15, 1910.

1. Be it enacted by the General Assembly of Virginia, That an act approved January twelfth, eighteen hundred and ninety-eight, entitled an act to require employers of females in stores, shops, offices, or manufac-

tories, as clerks, operatives or helpers in any business, trade or occupation, to provide seats for such female employees, and providing a penalty for failure or refusal to provide such seats, be amended and re-enacted so as to read as follows:

That chairs, stools or other suitable seats shall be maintained in mercantile establishments for the use of female employees therein to the number of at least one seat for every three females employed, and the use thereof by such employees shall be allowed at such times and to such extent as may be necessary for the preservation of their health. If the duties of the female employees, for the use of whom the seats are furnished, are to be principally performed in front of a counter, table, desk or fixture, such seats shall be placed in front thereof; if such duties are to be principally performed behind such counter, table, desk or fixture, such seats shall be placed behind the same.

§ 2. If any employer of female help in the State of Virginia shall neglect or refuse to provide seats, as provided in this act, or shall make any rules, orders or regulations in his shop, store or other place of business, requiring females to remain standing when not necessarily employed in service or labor therein, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be liable to a fine therefor in a sum not to exceed twenty-five dollars, with costs, in the discretion of the court.

Decisions of Courts Affecting Labor

[Except in cases of special interest, the decisions here presented are restricted to those rendered by the Federal courts and the higher courts of the States and Territories. Only material portions of such decisions are reproduced, introductory and explanatory matter being given in the words of the editor.]

Decisions Under Statute Law.

ALIEN CONTRACT LABORERS — DEPORTATION — EVIDENCE — *Ex parte George, United States District Court, Northern District of Alabama, 180 Federal Reporter, page 785.*—Harry George was arrested under a warrant issued by the Secretary of Commerce and Labor and held for deportation to Greece, the country from which he had emigrated two years and nine months before the proceedings in question, the act of Congress of February 20, 1907 (34 Stat. 898), prohibiting the immigration of alien contract laborers. George petitioned for a writ of habeas corpus, on which petition the present trial was had in July, 1910. The result was a dismissal of the petition, George being remanded to custody to be held for deportation.

There was proof of conviction for a felonious offense, but as the case was decided independently thereof it will not be here considered. It was not disputed that the proprietor of a shoe-shining establishment in Birmingham, Ala., while in Greece had offered to advance transportation money for George, taking a mortgage on his land as security therefor, and promising to employ George at a rate of $20 per month, out of which wages the loan for transportation should be repaid. The petitioner's plea was that the warrant did not designate the transaction with sufficient clearness, as to which Judge Grubb, speaking for the court, said:

"The warrant charges that he was induced or solicited to migrate to this country by offers or promises of employment and in consequence of an agreement to perform labor in this country. The petitioner was fully apprised by the warrant that his deportation was sought by the government because of a promise made to him or an agreement made with him to perform labor in this country, which induced his immigration. There could be no room for doubt on the part of petitioner as to the identity of the transaction relied on by the government, since he could have received but one such promise and made but one such agreement. The warrant was sufficient as to this charge, certainly when unobjected to on the hearing and criticized for the first time after deportation was ordered and collaterally upon a writ of habeas corpus. The warrant charges each of the elements of the ground of deportation relied on, and is not void."

Continuing, the court said:

"The evidence shows without conflict that the petitioner was within the excluded class, called 'contract laborers.' Upon a promise to employ him upon his arrival in this country at stipulated wages in a definite occupation, made by one who advanced him money for his passage, secured by a mortgage on his property, and accompanied him on his journey, he came to this country, went to work for such person at the stipulated wages and at the designated occupation, repaid the advance out of his wages, and continued in the employment of the person who made the promise and advance for a year.

"The writ is discharged, and the petitioner is remanded to the custody of the sheriff to await the execution of the warrant of deportation."

EIGHT-HOUR LAW—CONSTRUCTION OF LEVEES ON THE MISSISSIPPI RIVER—EMERGENCIES—*United States v. Garbish, United States Circuit Court for the Eastern District of Louisiana, 180 Federal Reporter, page*

502.—This case involved the construction of the emergency provision of the Federal eight-hour law of August 1, 1892 (27 Stat. 340; U. S. Comp. St. p. 2521). This law restricts the employment of labor on public works to eight hours per day, with exceptions for cases of extraordinary emergencies. Harman Garbish was indicted for a violation of this statute by working his men in the construction of a levee. There was no question as to the facts, but only as to the application of the law to the facts. Garbish demurred to the indictment, and the demurrer was sustained, as appears from the quoted opinion of Judge Foster, who spoke for the court.

The opinion follows:

"Stripped of the surplusage, the indictment charges that on August 17, 1908, the defendant, a contractor, was engaged in building certain public levees on the banks of the Mississippi river in the parish of St. James, La., and required and permitted the laborers employed by him, and engaged in the said work, to work more than eight hours in one calendar day. The indictment further sets up that during the months of August, September, October, November and December the waters of the Mississippi river annually fall below the level of the surrounding land and are retained within its banks without the necessity of artificial levees; that the work was being done in the ordinary and usual course of levee building by the government of the United States, in preparation for the high waters that annually come down the river; that the existing levee was not of sufficient size and strength and did not comply with the government standard, and was being destroyed and replaced by the new, higher and stronger levee; that nothing unusual or out of the ordinary had required the destruction of the old levee, or the building of the new levee; and that the contractor had the usual time to complete the levee, so as to allow it to settle and pack and become ready to withstand the next annual rise of the river.

"The defendant rests his case on the proposition that the building of levees on the Mississippi river, in the eastern district of Louisiana, at all times presents an extraordinary emergency; and hence that particular work is exempted from the operation of the law. This is denied by the government, and the indictment contains the general averment that no extraordinary emergency existed. The question thus squarely presented is decisive of the case, if defendant's contention be sustained.

"The building of levees in Louisiana has at all times presented many problems. It is absolutely necessary, not only for the preservation of property and to permit the cultivation of the land, but to safeguard the very lives of the inhabitants as well, that levees should be built on the banks of the Mississippi river in this locality. Therefore it has always been usual that levee work proceed with the greatest dispatch, and the labor of the day has never been restricted to eight hours. In the nature of things, it is impossible to employ an unlimited number of men or teams in the building of levees, as, no matter how great a force the contractor may assemble, the work will not permit of crowding. It is necessary that levees be built in as short a time as possible, in order that they may settle as much as they can, and that the grass may become well rooted upon them, before they are called upon to bear the strain of a high river.

"It is true that the months of August, September, October, November and December are the most favorable for levee building, but there is no certainty that during any part of these months the river will maintain a low stage. When the river is bank full, necessarily no levees can be built. Statistics of the river's height, at New Orleans, show that during the past twenty-five years the river has been bank full on nearly every day of the year, and these statistics may well apply to the locality where the defendant was working. An unprecedented rain, or an early freeze followed by a thaw, anywhere in the valley of the Mississippi river or its tributaries, might unexpectedly cause the river to rise at New Orleans. No one can foresee or anticipate the acts of nature, and who can say that a few days' more time, in which it might have become solidified, would not have so materially added to the levee's strength as to enable it to withstand the pressure, and without which it might signally fail.

"All of these facts are within the common knowledge of the people of this district, and, in connection with the specific allegations of fact in the indictment, overcome the mere conclusion of the pleader that no extraordinary emergency existed. The case presented here is not that of a contractor trying to complete his job on schedule time, nor is it a question of expediency or the saving of expense. In my opinion, the building of levees on the banks of the Mississippi river in the eastern district of Louisiana presents at all times an extraordinary emergency, within the meaning of the statute.

"It may be that the indictment is otherwise demurrable, but I prefer to base my decision on the broad ground above set forth.

"The demurrer will be sustained, and the defendant discharged."

EMPLOYERS' LIABILITY — COMPENSATION LAW — LIABILITY WITHOUT FAULT—DUE PROCESS OF LAW—CONSTITUTIONALITY OF STATUTE—*Ives v. South Buffalo Railway Company, Court of Appeals of New York (copy of opinion furnished by State reporter).*—This case came before the court of appeals on an appeal from a decision by the Supreme Court sustaining the validity of chapter 674 of the Acts of 1910. (124 N. Y. Supp. 920.) This law required employers in designated dangerous employments to compensate their workmen for injuries befalling them in the course of employment, resulting merely from the risk of the employment, and without regard to the negligence of the employer. (For the text of the law see Bulletin No. 90, pp. 713, 714; Bulletin No. 91, pp. 1100-1102.) The plaintiff Ives was a brakeman in the employment of the railway company named, and was injured without negligence, but solely by reason of the necessary risks of his employment. The company resisted his claim to compensation under the law on the ground that the law was unconstitutional, denying equal protection of the law in contravention of the provisions of the fourteenth amendment, and violating the right of trial by jury guaranteed by the Constitution of the State. From a decision in the plaintiff's favor in the Supreme Court the company appealed, securing a reversal of the judgment of the lower court on grounds that appear in the following opinion, which was delivered by Judge Werner on March 24, 1911, all judges concurring. Judge Werner said:

"In 1909 the legislature passed a law (ch. 518) providing for a commission of fourteen persons, six of whom were to be appointed by the governor, three by the president of the Senate from the Senate, and five by the speaker of the Assembly from the Assembly, 'to make inquiry, examination and investigation into the working of the law in the State of New York relative to the liability of employers to employees for industrial accidents, and into the comparative efficiency, cost, justice, merits and defects of the laws of other industrial States and countries, relative to the same subject, and as to the causes of the accidents to employees.' The act contained other provisions germane to the subject and provided for a full and final report to the legislature of 1910, if practicable, and if not practicable, then to the legislature of 1911, with such recommendations for legislation by bill or otherwise as the commission might deem wise or expedient. Such a commission was appointed and promptly organized by the election of officers and the appointment of subcommittees, the chairman being Senator Wainwright, from whom it has taken the name of the 'Wainwright commission,' by which it is popularly known. No word of praise could overstate the industry and intelligence of this commission in dealing with a subject of such manifold ramifications and of such far-reaching importance to the State, to employers and to employees. We cannot dwell in detail upon the many excellent features of its comprehensive report, because the limitations of time and space must necessarily confine us to such of its aspects as have a necessary relation to the legal questions which we are called upon to decide. As the result of its labors the commission recommended for adoption the bill which, with slight changes, was enacted into law by the legislature of 1910, under the designation of article 14-a

of the labor law. This act is modeled upon the English workmen's compensation act of 1897, which has since been extended so as to cover every kind of occupational injury. Our commission has frankly stated in its report that the classification of the industries which will be immediately affected by the present statute is only tentative, and that other more extended classifications will probably be recommended to the legislature for its action.

"The statute, judged by our common-law standards, is plainly revolutionary. Its central and controlling feature is that every employer who is engaged in any of the classified industries shall be liable for any injury to a workman arising out of and in the course of the employment by 'a necessary risk or danger of the employment or one inherent in the nature thereof; * * * provided that the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the serious and wilful misconduct of the workman.' This rule of liability, stated in another form, is that the employer is responsible to the employee for every accident in the course of the employment, whether the employer is at fault or not, and whether the employee is at fault or not, except when the fault of the employee is so grave as to constitute serious and wilful misconduct on his part. The radical character of this legislation is at once revealed by contrasting it with the rule of the common law, under which the employer is liable for injuries to his employee only when the employer is guilty of some act or acts of negligence which caused the occurrence out of which the injuries arise, and then only when the employee is shown to be free from any negligence which contributes to the occurrence. The several judicial and statutory modifications of this broad rule of the common law we shall further on have occasion to mention. Just now our purpose is to present in sharp juxtaposition the fundamentals of these two opposing rules—namely, that under the common law an employer is liable to his injured employee only when the employer is at fault and the employee is free from fault; while under the new statute the employer is liable, although not at fault, even when the employee is at fault, unless this latter fault amounts to serious and wilful misconduct. The reasons for this departure from our long-established law and usage are summarized in the language of the commission as follows:

" 'First, that the present system in New York rests on a basis that is economically unwise and unfair, and that in operation it is wasteful, uncertain and productive of antagonism between workmen and employers.

" 'Second, that it is satisfactory to none and tolerable only to those employers and workmen who practically disregard their legal rights and obligations and fairly share the burden of accidents in industries.

" 'Third, that the evils of the system are most marked in hazardous employments, where the trade risk is high and serious accidents frequent.

" 'Fourth, that, as matter of fact, workmen in the dangerous trades do not, and practically cannot, provide for themselves adequate accident insurance, and, therefore, the burden of serious accidents falls on the workmen least able to bear it, and brings many of them and their families to want.'

"This indictment of the old system is followed by a statement of the anticipated benefits under the new statute as follows: 'These results can, we think, be best avoided by compelling the employer to share the accident burden in intrinsically dangerous trades, since by fixing the price of his product the shock of the accident may be borne by the community. In those employments which have not so great an element of danger, in which, speaking generally, there is no such imperative demand for the exercise of the police power of the State for the safeguarding of its workers from destitution and its consequences, we recommend, as the first step in this change of system, such amendment of the present law as will do away with some of its unfairness in theory and practice and increase the workman's chance of recovery under the law. With such changes in the law we couple an elective plan of compensation which, if generally adopted, will do away with many of the evils of the present system. Its adoption will, we believe, be profitable to both employer and employee, and prove to be the simplest way for the State to change its system of liability without

disturbance of industrial conditions. Not the least of the motives moving us is the hope that by these means a source of antagonism between employer and employed, pregnant with danger for the State, may be eliminated.'

"This quoted summary of the report of the commission to the legislature, which clearly and fairly epitomizes what is more fully set forth in the body of the report, is based upon a most voluminous array of statistical tables, extracts from the works of philosophical writers and the industrial laws of many countries, all of which are designed to show that our own system of dealing with industrial accidents is economically, morally and legally unsound. Under our own form of government, however, courts must regard all economic, philosophical and moral theories, attractive and desirable though they may be, as subordinate to the primary question whether they can be moulded into statutes without infringing upon the letter or spirit of our written constitutions. In that respect we are unlike any of the countries whose industrial laws are referred to as models for our guidance. Practically all of these countries are so-called constitutional monarchies, in which, as in England, there is no written constitution, and the Parliament or law-making body is supreme. In our country the Federal and State Constitutions are the charters which demark the extent and the limitations of legislative power; and while it is true that the rigidity of a written constitution may at times prove to be a hindrance to the march of progress, yet more often its stability protects the people against the frequent and violent fluctuations of that which, for want of a better name, we call public opinion.

"With these considerations in mind we turn to the purely legal phases of the controversy for the purpose of disposing of some things which are incidental to the main question. The new statute, as we have observed, is totally at variance with the common-law theory of the employer's liability. Fault on his part is no longer an element of the employee's right of action. This change necessarily and logically carries with it the abrogation of the 'fellow-servant' doctrine, the 'contributory negligence' rule and the law relating to the employee's assumption of risks. There can be no doubt that the first two of these are subjects clearly and fully within the scope of legislative power; and that as to the third, this power is limited to some extent by constitutional provisions.

"The 'fellow-servant' rule is one of judicial origin engrafted upon the common law for the protection of the master against the consequences of negligence in which he has no part. In its early application to simple industrial conditions it had the support of both reason and justice. By degrees it was extended until it became evident that under the enormous expansion and infinite complexity of our modern industrial conditions the rule gave opportunity, in many instances, for harsh and technical defenses. In recent years it has been much restricted in its application to large corporate and industrial enterprises, and still more recently it has been modified and, to some extent abolished, by the labor law and the employers' liability act.

"The law of contributory negligence has the support of reason in any system of jurisprudence in which the fault of one is the basis of liability for injury to another. Under such a system it is at least logical to hold that one who is himself to blame for his injuries should not be permitted to entail the consequences upon another who has not been negligent at all, or whose negligence would not have caused the injury if the one injured had been free from fault. It may be admitted that the reason of the rule is often lost sight of in the effort to apply it to a great variety of practical conditions, and that its efficacy as a rule of justice is much impaired by the lack of uniformity in its administration. In the admiralty branch of the Federal courts, for instance, we have what is known as the rule of comparative negligence under which, when there is negligence on both sides, it is apportioned and a verdict rendered accordingly. In many of the States contributory negligence is a defense which must be pleaded and proved by the defendant, and in some States it has been entirely abrogated by statute. In our own State the plaintiff's freedom from contributory negligence is an essential part of his cause of action which must be affirmatively established

by him, except in cases brought by employees under the labor law, by virtue of which the contributory negligence of an employee is now made a defense which must be pleaded and proved by the employer; and under the employers' liability act which provides that the employee's continuance in his employment after he has knowledge of dangerous conditions from which injury may ensue, shall not, as matter of law, constitute contributory negligence.

"Under the common law the employee was also held to have assumed the ordinary and obvious risks incident to the employment, as well as the special risks arising out of dangerous conditions which were known and appreciated by him. This doctrine, too, has been modified by statute so that under the labor law and the employers' liability act the employee is presumed to have assented to the necessary risks of the occupation or employment and no others; and these necessary risks are defined as those only which are inherent in the nature of the business and exist after the employer has exercised due care in providing for the safety of his employees, and has complied with the laws affecting or regulating the business or occupation for the greater safety of employees.

"We have said enough to show that the statutory modifications of the 'fellow-servant' rule and the law of 'contributory negligence' are clearly within the legislative power. These doctrines, for they are nothing more, may be regulated or even abolished. This is true to a limited extent as to the assumption of risk by the employee. In the labor law and the employers' liability act, which define the risks assumed by the employee, there are many provisions which cast upon the employer a great variety of duties and burdens unknown to the common law. These can doubtless be still further multiplied and extended to the point where they deprive the employer of rights guaranteed to him by our constitutions, and there, of course, they must stop, as we shall endeavor to demonstrate later on.

"Passing now to the constitutional objections which are presented against the new statute, we will first eliminate those which we regard as clearly or probably untenable. The appellant [company] argues and the respondent [Ives] admits that the new statute cannot be upheld under the reserved power of the legislature to alter and amend charters. It is true that the defendant in the case at bar is a railroad corporation, but the act applies to eight enumerated occupations or industries without regard to the character of the employers. They may be corporations, firms or individuals. Nowhere in the act is there any reference to corporations. The liability sought to be imposed is based upon the nature of the employment and not upon the legal status of the employer. It is, therefore, unnecessary to decide how far corporate liability may be extended under the reserved power to alter or amend charters, except as that question may be incidentally discussed in considering the police power of the State.

"The appellant contends that the classification in this statute of a limited number of employments as dangerous is fanciful or arbitrary, and is, therefore, repugnant to that part of the fourteenth amendment to the Federal Constitution which guarantees to all our citizens the equal protection of the laws. Classification, for purposes of taxation, or of regulation under the police power, is a legislative function with which the courts have no right to interfere unless it is so clearly arbitrary or unreasonable as to invade some constitutional right. A State may classify persons and objects for the purpose of legislation, provided the classification is based on proper and justifiable distinctions (St. John *v.* New York, 201 U. S. 633; Missouri Pac. Ry. Co. *v.* Mackey, 127 U. S. 205 [8 Sup. Ct. 1161]; Minneapolis & St. L. Ry. Co. *v.* Herrick, 127 U. S. 210 [8 Sup. Ct. 1176]; Chicago, K. & W. R. R. Co. *v.* Pontius, 157 U. S. 209), and for a purpose within the legislative power. There can be no doubt, we think, that all of the occupations enumerated in the statute are more or less inherently dangerous to a degree which justifies such legislative regulation as is properly within the scope of the police power. We need not look for illustration or authority outside of the labor law to which this new statute has been added. The whole of that law which precedes the latest addition is devoted to restrictions and regulations imposed upon employers in specified occupations or

conditions for the conservation of the health, safety and morals of employees. These restrictions and regulations do not affect all employers alike in all occupations, nor are they designed to have that effect. The mandate of the Federal Constitution is complied with if all who are in a particular class are treated alike. (Missouri Pac. Ry. Co. *v.* Humes, 115 U. S. 512, 523; Barbier *v.* Connolly, 113 U. S. 27; Soon Hing *v.* Crowley, 113 U. S. 703; Magoun *v.* Ill. Trust & Sav. Bank, 170 U. S. 283, 294; People ex rel. Hatch *v.* Reardon, 184 N. Y. 431; People ex rel. Farrington *v.* Mensching, 187 N. Y. 8, 16), and that, we think, is the effect of this classification.

"Another objection urged against the statute is that it violates section 2 of article 1 of our State Constitution, which provides that 'The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever.' This objection is aimed at the provisions of sections 219-a and 219-d of the statute, which relate to the 'scale of compensation' and 'settlement of disputes,' and has no reference to the fundamental question whether the attempt to impose upon the employer a liability when he is not at fault constitutes a taking of property without due process of law. In other words, the objection which we are now considering bears solely upon the question whether the two last-mentioned sections of the statute deprive the employer of the right to have a jury fix the amount which he shall pay when his liability to pay has been determined against him. If these provisions relating to compensation are to be construed as definitely fixing the amount which an employer must pay in every case where his liability is established by the statute, there can be no doubt that they constitute a legislative usurpation of one of the functions of a common-law jury. In all cases where there is a right to trial by jury there are two elements which necessarily enter into a verdict for the plaintiff: 1. The right to recover. 2. The amount of the recovery. It is as much the right of a defendant to have a jury assess the damages claimed against him as it is to have the question of his liability determined by the same body. (East Kingston *v.* Towle, 48 N. H. 57; Wadsworth *v.* Union Pacific Ry. Co., 18 Colo. 600; Fairchild *v.* Rich, 68 Vt. 202.) This part of the statute, in its present form, has given rise to conflicting views among the members of the court, and, since the disposition of the questions which it suggests is not necessary to the decision of the case, we do not decide it.

"Thus far we have considered only such portions of the statute as we deem to be clearly within the legislative power, and one as to which there is difference of opinion. This we have done because we desire to present no purely technical or hypercritical obstacles to any plan for the beneficent reformation of a branch of our jurisprudence in which, it may be conceded, reform is a consummation devoutly to be wished. In this spirit we have called attention to those features of the new statute which might be upheld as consonant with legislative authority under our constitutional limitations, as well as to the sections upon which we are in doubt. We turn now to the two objections which we regard as fatal to its validity.

"This legislation is challenged as void under the fourteenth amendment to the Federal Constitution and under section 6, article 1, of our State Constitution, which guarantee all persons against deprivation of life, liberty or property without due process of law. We shall not stop to dwell at length upon definitions of 'life,' 'liberty,' 'property' and 'due process of law.' They are simple and comprehensive in themselves and have been so often judicially defined that there can be no misunderstanding as to their meaning. Process of law in its broad sense means law in its regular course of administration through courts of justice, and that is but another way of saying that every man's right to life, liberty and property is to be disposed of in accordance with those ancient and fundamental principles which were in existence when our constitutions were adopted. 'Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty or property in its most comprehensive sense; to be heard by testimony or otherwise, and to have the right of controverting by proof every material fact which bears upon the question of right in the matter involved. If

any question of fact or liability be conclusively presumed against him, this is not due process of law.' (Ziegler *v.* S. & N. Ala. R. R. Co., 58 Ala. 594.) Liberty has been authoritatively defined as 'the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or vocation' (Matter of Jacobs, 98 N. Y. 98, 106); and the right of property as 'the right to acquire, possess and enjoy it in any way consistent with the equal rights of others and the just exactions and demands of the State.' (Bertholf *v.* O'Reilly, 74 N. Y. 509, 515.) The several industries and occupations enumerated in the statute before us are concededly lawful within any of the numerous definitions which might be referred to, and have always been so. They are, therefore, under the constitutional protection. One of the inalienable rights of every citizen is to hold and enjoy his property until it is taken from him by due process of law. When our constitutions were adopted it was the law of the land that no man who was without fault or negligence could be held liable in damages for injuries sustained by another. That is still the law, except as to the employers enumerated in the new statute, and as to them it provides that they shall be liable to their employees for personal injury by accident to any workman arising out of and in the course of the employment which is caused in whole or in part, or is contributed to, by a necessary risk or danger of the employment or one inherent in the nature thereof, except that there shall be no liability in any case where the injury is caused in whole or in part by the serious and wilful misconduct of the injured workman. It is conceded that this is a liability unknown to the common law, and we think it plainly constitutes a deprivation of liberty and property under the Federal and State Constitutions, unless its imposition can be justified under the police power, which will be discussed under a separate head. In arriving at this conclusion we do not overlook the cogent economic and sociological arguments which are urged in support of the statute. There can be no doubt as to the theory of this law. It is based upon the proposition that the inherent risks of an employment should in justice be placed upon the shoulders of the employer, who can protect himself against loss by insurance and by such an addition to the price of his wares as to cast the burden ultimately upon the consumer; that indemnity to an injured employee should be as much a charge upon the business as the cost of replacing or repairing disabled or defective machinery, appliances or tools; that, under our present system, the loss falls immediately upon the employee who is almost invariably unable to bear it, and ultimately upon the community which is taxed for the support of the indigent; and that our present system is uncertain, unscientific and wasteful, and fosters a spirit of antagonism between employer and employee which it is to the interests of the State to remove. We have already admitted the strength of this appeal to a recognized and widely prevalent sentiment, but we think it is an appeal which must be made to the people and not to the courts. The right of property rests not upon philosophical or scientific speculations nor upon the commendable impulses of benevolence or charity, nor yet upon the dictates of natural justice. The right has its foundation in the fundamental law. That can be changed by the people, but not by legislatures. In a government like ours theories of public good or necessity are often so plausible or sound as to command popular approval, but courts are not permitted to forget that the law is the only chart by which the ship of state is to be guided. Law as used in this sense means the basic law and not the very act of legislation which deprives the citizen of his rights, privileges or property. Any other view would lead to the absurdity that the constitutions protect only those rights which the legislatures do not take away. If such economic and sociologic arguments as are here advanced in support of this statute can be allowed to subvert the fundamental idea of property, then there is no private right entirely safe, because there is no limitation upon the absolute discretion of legislatures, and the guarantees of the constitution are a mere waste of words. (Wynehamer *v.* People, 13 N. Y. 378; Taylor *v.* Porter, 4 Hill 140, 145; Norman *v.* Heist, 5 Wats. &

Serg. 193; Hake *v.* Henderson, 4 Dev. 15.) As stated by Judge Comstock in the case of Wynehamer *v.* People, 'these constitutional safeguards, in all cases, require a judicial investigation, not to be governed by a law specially enacted to take away and destroy existing rights, but confined to the question whether, under the pre-existing rule of conduct, the right in controversy has been lawfully acquired and is lawfully possessed' (p. 395). If the argument in support of this statute is sound we do not see why it cannot logically be carried much further. Poverty and misfortune from every cause are detrimental to the State. It would probably conduce to the welfare of all concerned if there could be a more equal distribution of wealth. Many persons have much more property than they can use to advantage and many more find it impossible to get the means for a comfortable existence. If the legislature can say to an employer, 'You must compensate your employee for an injury not caused by you or by your fault,' why can it not go farther and say to the man of wealth, 'You have more property than you need and your neighbor is so poor that he can barely subsist; in the interest of natural justice you must divide with your neighbor so that he and his dependents shall not become a charge upon the State'? The argument that the risk to an employee should be borne by the employer because it is inherent in the employment may be economically sound, but it is at war with the legal principle that no employer can be compelled to assume a risk which is inseparable from the work of the employee, and which may exist in spite of a degree of care by the employer far greater than may be exacted by the most drastic law. If it is competent to impose upon an employer, who has omitted no legal duty and has committed no wrong, a liability based solely upon a legislative fiat that his business is inherently dangerous, it is equally competent to visit upon him a special tax for the support of hospitals and other charitable institutions upon the theory that they are devoted largely to the alleviation of ills primarily due to his business. In its final and simple analysis that is taking the property of A and giving it to B, and that cannot be done under our constitutions. Practical and simple illustrations of the extent to which this theory of liability might be carried could be multiplied ad infinitum, and many will readily occur to the thoughtful reader. There is, of course, in this country no direct legal authority upon the subject of the liability sought to be imposed by this statute, for the theory is not merely new in our system of jurisprudence, but plainly antagonistic to its basic idea. The English authorities are of no assistance to us, because in the king's courts the decrees of the Parliament are the supreme law of the land, although they are interesting in their disclosures of the paternalism which logically results from a universal employers' liability based solely upon the relation of employer and employee, and not upon fault in the employer. There are a few American cases, however, which clearly state the legal principle which, we think, is applicable to the case at bar, and with a brief reference to them we shall close this branch of the discussion. In the nitroglycerine case (Parrot *v.* Wells, Fargo & Co., 15 Wall. 524) the plaintiff, who was the common landlord of the defendants and other tenants, sought to hold the defendants liable for damages occasioned to the premises occupied by the other tenants, by an explosion of nitroglycerine which had been delivered to the defendants as common carriers for shipment. It appeared that the defendants were innocently ignorant of the contents of the packages containing the dangerous explosives, and that they were guilty of no negligence in receiving or handling them. Upon these facts the Federal Supreme Court held that it was a case of unavoidable accident for which no one was legally responsible. In Ohio and Mississippi Ry. Co. *v.* Lackey, 78 Ill. 55, the question was whether the railroad company was liable under a statute which provided that 'every railroad company running cars within this State shall be liable for all the expense of the coroner and his inquest, and the burial of all persons who may die on the cars, or who may be killed by collision or other accident occurring to such cars, or otherwise.' In speaking of the effect of that section of the law Mr. Justice Breese observed: 'An examina-

tion of the section will show that no default, or negligence of any kind, need be established against the railroad company, but they are mulcted in heavy charges if, notwithstanding all their care and caution, a death should occur on one of their cars, no matter how caused, even if by the party's own hand. Running of trains by these corporations is lawful and of great public benefit. It is not claimed that the liability attaches for the violation of any law, the omission of any duty or the want of proper care or skill in running their trains. The penalty is not aimed at anything of this kind. We say penalty, for it is in the nature of a penalty, and there is a constitutional inhibition against imposing penalties where no law has been violated or duty neglected. Neither is pretended in this case, nor are they in contemplation of the statute. A passenger on a train dies from sickness. He is a man of wealth. Why should his burial expenses be charged to the railroad company? There is neither reason nor justice in it; and if he be poor, having not the means for a decent burial, the general law makes ample provision for such cases.' To the same effect are the numerous cases arising under statutes passed by different States imposing upon railroad corporations absolute liability for killing or injuring upon their rights of way horses, cattle, etc., by running over them, in which this liability was held to constitute a deprivation of property without due process of law. (Jensen *v.* Union Pacific Ry Co., 6 Utah 253; Ziegler *v.* South & North Alabama Ry. Co., 58 Ala. 594; Birmingham Ry. Co. *v.* Parsons, 100 Ala. 662; Bielingbery *v.* Montana Union Ry. Co., 8 Mont. 271; Schenk *v.* Union Pacific Ry. Co., 5 Wyo. 430; Cottrell *v.* Union Pacific Ry. Co., 2 Wyo. 540.)

"A different interpretation has been given to statutes imposing upon railroad corporations the duty to fence their rights of way, under which the liability is imposed for failure to obey the command of the statutes. (Quackenbush *v.* Wis. Ry. Co., 62 Wis. 411; Missouri Pac. Ry Co. *v.* Humes, 115 U. S. 512; Minneapolis & St. L. Ry Co. *v.* Beckwith, 129 U. S. 26.) 'But even such statutes,' says Black in his work on Constitutional Law (2d ed., p. 351), 'cannot go beyond the imposition of such a penalty in cases where the fault lies at the door of the company. If the law attempts to make such companies liable for accidents which were not caused by their negligence or disobedience of the law, but by the negligence of others or by uncontrollable causes, or does not give the company an opportunity to show these facts in its own defense, it is void.'

"We conclude, therefore, that in its basic and vital features the right given to the employee by this statute does not preserve to the employer the 'due process' of law guaranteed by the constitutions, for it authorizes the taking of the employer's property without his consent and without his fault. So far as the statute merely creates a new remedy in addition to those which existed before, it is not invalid. The State has complete control over the remedies which it offers to suitors in its courts even to the point of making them applicable to rights or equities already in existence. It may change the common law and the statutes so as to create duties and liabilities which never existed before. It is true, as stated by Mr. Justice Brown in Holden *v.* Hardy, 169 U. S. 366, 385, 386, that 'the law is, to a certain extent, a progressive science; that in some of the States methods of procedure, which at the time the Constitution was adopted were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interests; while, upon the other hand, certain other classes of persons, particularly those engaged in dangerous or unhealthful employments, have been found to be in need of additional protection. Even before the adoption of the Constitution much had been done toward mitigating the severity of the common law, particularly in the administration of its criminal branch. * * * The present century has originated legal reforms of no less importance. The whole fabric of special pleading, once thought to be necessary to the elimination [sic] of the real issue between the parties, has

crumbled to pieces. The ancient tenures of real estate have been largely swept away, and land is now transferred almost as easily and cheaply as personal property. Married women have been emancipated from the control of their husbands and placed upon a practical equality with them with respect to the acquisition, possession and transmission of property. Imprisonment for debt has been abolished. Exemptions from execution have been largely added to, and in most of the States homesteads are rendered incapable of seizure and sale upon forced process. Witnesses are no longer incompetent by reason of interest, even though they be parties to the litigation. Indictments have been simplified, and an indictment for the most serious of crimes is now the simplest of all. In several of the States grand juries, formerly the only safeguard against a malicious prosecution, have been largely abolished, and in others the rule of unanimity, so far as applied to civil cases, has given way to verdicts rendered by a three-fourths majority.' The power of the State to make such changes in methods of procedure and in substantive law is clearly recognized. (Hurtado *v.* California, 110 U. S. 516; Hayes *v.* Missouri, 120 U. S. 68; Missouri Pac. Railway Co. *v.* Mackey, 127 U. S. 205; Hallinger *v.* Davis, 146 U. S. 314; Matter of Kemmler, 136 U. S. 436; Duncan *v.* Missouri, 152 U. S. 377.) We repeat, however, that this power must be exercised within the constitutional limitations which prescribe the law of the land. 'Due process of law' is process due according to the law of the land, and the phrase as used in the fourteenth amendment of the Federal Constitution with reference to the power of the States means the general law of the several States as fixed or guaranteed by their constitutions. As stated by Mr. Webster, in the Dartmouth College case, 'the law of the land is the general law; the law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial.'

"If we are warranted in concluding that the new statute violates private right by taking the property of one and giving it to another without due process of law, that is really the end of this case. But the auspices under which this legislation was enacted, no less than its intrinsic importance, entitled its advocates to the fullest consideration of every argument in its support, and we, therefore, take up the discussion of the police power under which this law is sought to be justified. The police power is, of course, one of the necessary attributes of civilized government. In its most comprehensive sense it embraces the whole system by which the State seeks to preserve the public order, to prevent offenses against the law, to insure to citizens in their intercourse with each other the enjoyment of their own so far as is reasonably consistent with a like enjoyment of rights by others. Under it persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity of the State. But it is a power which is always subject to the constitution, for in a constitutional government limitation is the abiding principle, exhibited in its highest form in the constitution as the deliberative judgment of the people, which moderates every claim of right and controls every use of power. In the language of Chief Justice Shaw, in Commonwealth *v.* Alger, 7 Cush. 85: 'It is much easier to perceive and realize the existence and sources of this power than to mark its boundaries or prescribe limits to its exercise.' It covers a multitude of things that are designed to protect life, limb, health, comfort, peace and property according to the maxim *sic utere tuo ut alienum non laedas*, but its exercise is justified only when it appears that the interests of the public generally, as distinguished from those of a particular class, require it, and when the means used are reasonably necessary for the accomplishment of the desired end, and are not unduly oppressive. (Lawton *v.* Steele, 152 U. S. 133, 137; Colon *v.* Lisk, 153 N. Y. 188, 196; Wright *v.* Hart, 182 N. Y. 330.) In order to sustain legislation under the police power the courts must be able to see that its operation tends in some degree to prevent some offense or evil, or to preserve public health, morals, safety and welfare. If it discloses no such purpose, but is clearly calculated to invade the liberty and property of private citizens, it is plainly the duty of the

courts to declare it invalid, for legislative assumption of the right to direct the channel into which the private energies of the citizen may flow, or legislative attempt to abridge or hamper the right of the citizen to pursue, unmolested and without unreasonable regulation, any lawful calling or avocation which he may choose, has always been condemned under our form of government. Concrete illustrations of what may and what may not be done under the police power are to be found in this very labor law of which the new statute is a part. As this statute stood before article 14-a was added, it regulated electric work, the operation of elevators, work on scaffolds, work with explosives and compressed air, the construction of tunnels and railroad work. It regulated the hours of work in certain employments; it directed the payment of wages in cash at specified periods; it provided for the protection of employees engaged in the erection of buildings; it compelled the employer to guard dangerous and exposed machinery; to construct fire escapes and ventilating appliances; to provide toilet facilities, pure drinking water and sanitary arrangements; it prohibited the employment of women, and of children under cartain ages, in specified occupations; it regulated the hours of labor of minors; it modified the fellow-servant rule, the law of contributory negligence and the assumption of risks; and, in short, it imposed upon the employer many restrictions and duties which were unknown to the common law. Broadly classified, all these and similar statutory provisions which are designed, in one way or another, to conserve the health, safety or morals of the employees, and to increase the duties and responsibilities of the employer, are rules of conduct which properly fall within the sphere of the police power. (Holden *v.* Hardy, 169 U. S. 366; Missouri Pac. Ry. Co. *v.* Mackey, 127 U. S. 205.) But the new addition to the labor law is of quite a different character. It does nothing to conserve the health, safety or morals of the employees, and it imposes upon the employer no new or affirmative duties or responsibilities in the conduct of his business. Its sole purpose is to make him liable for injuries which may be sustained wholly without his fault, and solely through the fault of the employee, except where the latter fault is such as to constitute serious and wilful misconduct. Under this law, the most thoughtful and careful employer, who has neglected no duty, and whose workshop is equipped with every possible appliance that may make for the safety, health and morals of his employees, is liable in damages to any employee who happens to sustain injury through an accident which no human being can foresee or prevent, or which, if preventable at all, can only be prevented by the reasonable care of the employee himself. That this is the unmistakable theory and purpose of the act is made perfectly plain by the recital in section 215, which sets forth that from the nature, conditions or means of prosecution of the work in the employments which are classified as dangerous, 'extraordinary risks to the life and limb of workmen engaged therein are inherent, necessary or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for accidents to workmen.' And to make the matter still more plain, the learned counsel for the commission argues in his brief that 'if it is competent for the legislature to say to the employer in a dangerous trade, "Use the utmost care in giving your workmen safe work, so that no act of yours, or implement of yours, or work that you set them to do, shall hurt them, and if you fail you shall be liable in damages"—if it is competent to make such a law, then it is equally competent to say as in this new act directly, "You shall be responsible for all damages caused by unsafe condition of work," and that is just what the liability for trade risks under the new act means.' In this argument the learned counsel ignores, or at least misses, as we think, the vital distinction between legislation which imposes upon an employer a legal duty, for the failure to perform which he may be penalized or rendered liable in damages, and legislation which makes him liable notwithstanding he has faithfully observed every duty imposed upon him by law. At pages 46 and 47 of the report of the commissioners are quoted the several pertinent provisions of our State Constitution. (Art. 1, sec. 18; art. 1, sec. 2; art. 1, sec. 1;

art. 1, sec. 6.) With reference to these, the commissioners say: 'It is obvious, on a mere reading, that the first section makes it impossible for the legislature to enact any law which will take away from the representatives of an injured workman the right of action there named for injuries causing death, nor can the legislature limit it in any way. It is equally obvious, it seems to us, that it was the intention of the second section of the Constitution (Art. 1, sec. 2) to provide that in all controversies in the courts of law either side should finally have a right to a jury trial on the question of liability, and however successful or unsuccessful jury trials may be in cases of employers' liability, or in other cases, that solemn mandate of the Constitution cannot be set aside. The third and fourth sections of the Constitution above quoted are practically those which, like the fourteenth amendment of the Federal Constitution, provide for due process of law in all legislation, that is, speaking generally, which prohibit the passage by the legislature of such legislation as shall arbitrarily deprive any of the citizens of the State of life, liberty or property.'

"These are interesting and salient admissions, but the ease with which these constitutional provisions are brushed aside is startling. Continuing, the commissioners say: 'But we regard it as settled that the legislature has power, if it so chooses, to change or abrogate the common law on employer's liability, or the employers' liability act, or any other statutes in regard thereto. * * * The legislature of this State, in the exercise of its general powers, * * * has in the past so legislated as to prescribe that employers in New York industries shall conduct their business, use their machines and use their property in such ways as shall conduce to the safety of the employees and the prevention of accident and disease. Such is the whole purpose of the labor law. * * * We are of opinion that it is competent for the legislature to take a further step and provide conditions of the carrying on of such dangerous industries—not at the moment conditions as to the method of carrying them on—but conditions providing that any man in the State who carries on such dangerous trades shall be liable to make compensation to the employees injured either by the fault of the employer, or by those unavoidable risks of the employment. The effect of such a statute would be to reverse the common-law doctrine that the employee assumes the risk of his employment.'

"With all due respect to the members of the commission, we beg to observe that the statute enacted in conformity with their recommendations does not stop at reversing the common law; it attempts to reverse the very provisions of the Constitution, which, the commissioners admit, are obviously beyond the reach of the legislature. We cannot understand by what power the legislature can take away from the employer a constitutional guaranty of which the employee may not also be deprived. If it is beyond the power of the legislature to take from the representatives of deceased employees their rights of action under the Constitution, by what measure of power or justice may the legislature assume to take from the employer the right to have his liability determined in an action at law? Conceding, as we do, that it is within the range of proper legislative action to give a workman two remedies for a wrong, when he had but one before, we ask, by what stretch of the police power is the legislature authorized to give a remedy for no wrong? If, before the passage of this law, the employer had a right to a jury trial upon the question of liability, where and how did he lose it? Can it be taken from him by the mere assertion that this statute only reverses the common-law doctrine that the employee assumes the risk of his employment? It would be quite as logical and effective to argue that this legislation only reverses the laws of nature, for in everything within the sphere of human activity the risks which are inherent and unavoidable must fall upon those who are exposed to them. We must admit that what the legislature may prohibit it may absolutely control. Where the right to exist, as in case of corporations, depends upon the will of the legislature, that right may be granted subject to prescribed conditions. In such a case an employer may be made an insurer of the safety of his employees as a condition of the permission to engage in business. But when an industry or calling is *per se* lawful and open to all, and,

therefore, beyond the prohibitive power of the legislature, the right of governmental control is subject to such reasonable enactments as are directly designed to conserve health, safety, comfort, morals, peace and order. (Lochner *v.* New York, 198 U. S. 45.) For the failure of an employer to observe such regulations the legislature may unquestionably enact direct penalties or create presumptions of fault which, if not rebutted by proof, may be regarded as sufficient evidence of liability for damages. That must be the extreme limit of the police power, for just beyond is the Constitution, which, in substance and effect, forbids that a citizen shall be penalized or subjected to liability unless he has violated some law or has been guilty of some fault.

"The limitations of the police power are illustrated in a great variety of cases. In Matter of Jacobs, 98 N. Y. 98, 99, it was held that an act was void which made it a misdemeanor to manufacture cigars or prepare tobacco in certain tenements. In People *v.* Marx, 99 N. Y. 377, this court condemned an act absolutely prohibiting the manufacture or sale of oleomargarine, upon the ground that it interfered with a lawful industry, not injurious to the public and not fraudulently conducted, although in a later case (People *v.* Arensberg, 105 N. Y. 123) another statute relating to the same subject was upheld because it was directly aimed at a designed and intentional imitation of dairy butter. In People *v.* Gillson, 109 N. Y. 389, 404, it was held that a statute was not within the police power which prohibited the sale or disposal of any article of food upon any representation or inducement that anything else will be delivered as a gift, prize, premium or reward to the purchaser. The ground of the decision was that it was not a health law; that it was not designed to prevent the adulteration of food, and that it was not in the power of the legislature to convert an innocent act into a crime. In Colon *v.* Lisk, 153 N. Y. 188, the statute under consideration provided for the summary seizure of any boat or vessel, used by one person in interfering with the oysters or shellfish of another, and for its forfeiture and sale. It was held that the statute sanctioned an unauthorized confiscation of private property for the mere protection of private rights and was not within the police power of the State. In People *v.* Hawkins, 157 N. Y. 1, this court decided that a statute was void which made it a misdemeanor to sell or expose for sale any goods made in a penal institution unless they were labeled 'convict made.' In People *v.* Orange County Road Con. Co., 175 N. Y. 84, it was held that the State cannot dictate to independent contractors on State work the hours of labor which they shall prescribe for their employees, where there was nothing in the character of the work or in the provisions of the contract to justify legislative interference. In Beardsley *v.* N. Y., L. E. & W. R. R. Co., 162 N. Y. 230, what is known as the 'mileage book act,' which required railroad companies to issue mileage books and provided a penalty for refusal, was unconstitutional as to railroad corporations in existence at the time of its enactment, because it was an illegal invasion of the vested property rights of such corporations. In Schnaier *v.* Navarre Hotel and I. Co., 182 N. Y. 88, the court pronounced invalid a statute which provided that it should be unlawful for a copartnership to engage in the business of employing or master plumber unless each and every member thereof shall have registered, after examination and certification by an examining board of plumbers. In People *v.* Marcus, 185 N. Y. 257, it was held that a section of the penal code was void which provided, in substance, that no person shall make the employment of another, or the continuance of such employment, conditional upon the employee's not joining or becoming a member of a labor organization. In People *v.* Williams, 189 N. Y. 131, 134, this court condemned that part of the labor law which prohibited the employment of an adult female in a factory before 6 o'clock in the morning or after 9 o'clock in the evening, and held that it was not a proper exercise of the police power, since it had no reference to the number of hours of labor or to the healthfulness of the employment.

"We have yet to consider certain special cases upon which the exponents of this new law have planted their faith and hope, and these run

along such divergent lines as to indicate, more clearly than anything else, the absence of any sound legal theory upon which this legislation can be sustained. These cases are cited in support of the contention that the common law and our statutes furnish many illustrations of legal liability without fault, but we shall endeavor by analysis to show how inapplicable they are to the questions now before the court. The case of Marvin *v.* Trout, 199. U. S. 212, arose under an Ohio statute which subjected premises used for gambling to a lien for money lost in gambling. The statute forbade gambling, and the court very properly argued that 'the power of the State to enact laws to suppress gambling cannot be doubted, and, as a means to that end, we have no doubt of its power to provide that the owner of the building in which gambling is conducted, who knowingly looks on and permits such gambling, can be made liable in his property which is thus used, to pay a judgment against those who won the money, as is provided in the statute. * * * The liability of the owner of the building to make good the loss sustained, under the circumstances set forth in the statute, was clearly part of the means resorted to by the legislature for the purpose of suppressing the evil in the interests of the public morals and welfare.' (p. 224.) A more cogent illustration of the undoubted application of the police power cannot be found. In the interest of good morals it is not merely the right but the duty of the State to suppress gambling, and the case, so far from being an authority for the idea of liability without fault, proceeds directly upon the theory that the owner was at fault in permitting his premises to be used for an illegal purpose. Then there is the case of Bertholf *v.* O'Reilly, 74 N. Y. 509, in which this court upheld the so-called 'civil damage act,' which gave to every husband, wife, parent, guardian, employer or other person who should be injured in person or property or means of support by any intoxication of any person a right of action against any person who by selling or giving away intoxicating liquors caused the intoxication, in whole or in part, and subjecting to the same liability any person or persons owning or renting or permitting the occupation of any building or premises with knowledge that intoxicating liquors were to be sold thereon. In that case, as in the case of Marvin *v.* Trout, *supra*, the controlling principle was that the State had the right to prohibit and, therefore, the absolute right to control. As Judge Andrews pertinently observed, 'the right of the State to regulate the traffic in intoxicating liquors, within its limits, has been exercised from the foundation of the government, and is not open to question. The State may prescribe the persons by whom and the conditions under which the traffic may be carried on. It may impose upon those who act under its license such liabilities and penalties as in its judgment are proper to secure society against the dangers of the traffic and individuals against injuries committed by intoxicated persons under the influence of or resulting from their intoxication.' (p. 517.) The defendant in that case, it is true, was not the licensee, but he had rented his premises for the traffic in intoxicating liquors knowing that they were to be so used. Upon that feature of the case Judge Andrews said: 'The liability imposed upon the landlord for the acts of the tenant is not a new principle in legislation. His liability only arises when he has consented that the premises may be used as a place for the sale of liquors. He selects the tenant, and he may, without violating any constitutional provision, be made responsible for the tenant's acts connected, with the use of the leased property.' (p. 525.) That is very far from being a case of liability without fault. The enactment of the 'civil damage act' was clearly within the police power, and the liability imposed did not deprive either the tenant or the landlord of 'due process of law,' for each had the right to his day in court and an opportunity to disprove the facts upon which the statutory right of action depended. Let us suppose, however, that the statute had gone so far as to provide that the mere fact of selling liquor by the tenant, or the mere fact of renting the premises for that purpose by the landlord, should be deemed conclusive proof of the intoxication of the person to whom the liquor was sold, and of the fact that the person bringing the suit had

suffered injury thereby, so that the person sued could not be heard to deny or disprove his responsibility for the intoxication or the injuries resulting therefrom. Would that be 'due process of law'? Suppose that the Ohio statute, which was also clearly within the general scope of the police power, had imposed upon the landlord a liability for money lost in gambling on his premises without his knowledge of the purpose for which the building was used, and had declared that evidence of the mere loss of the money should be sufficient to sustain a judgment against him. That would clearly be a case of liability without fault; but what court, controlled by constitutional limitations, would render such a judgment? We are referred to the case of Chicago, Rock Island and Pacific Ry. Co. *v.* Zernecke, 183 U. S. 582, as an illustration of liability without fault. We think that case has no analogy to the case at bar. There a statute of Nebraska imposed upon railroad corporations a liability for all injuries to passengers except when occasioned by the criminal negligence of the person injured, or when the injury was sustained in the violation of some express rule or regulation of the corporation. The point decided in that case was that this rule of liability was a part of the very statute under which the corporation took its charter. The defendant in the case at bar is a railroad corporation, and as such may be subject to State regulations which would not apply to other corporations or to individuals, but we are not now concerned with that question, since the statute before us has reference to employers in their relations with their employees, and not to railroads in their service to the public.

"In support of this new statute we are also asked to consider the supposed analogies of the law of deodands; the common-law liability of the husband for the torts of his wife; the liability of the master for the acts of his servant, and the liability of a ship for the care and maintenance of sick or disabled seamen. From the historical point of view, these subjects might be very entertainingly elaborated, but for the practical purposes of this discussion they may be very briefly disposed of. If the law of deodands was ever imported into this country it has never, to our knowledge, found expression in a single statute or judicial decision. It was one of those primitive conceptions of justice under which a chattel which caused the death of a human being was forfeited to the king. We are unable to see what bearing it can have upon the question whether, under our constitutions, it is due process of law to render a man liable for damages when he has been guilty of no fault. Quite as far-fetched seems the argument based upon the common-law liability of the husband for the torts of his wife. Under the common-law unity of husband and wife, the latter was presumed to act under the compulsion of the former; and the wife could never be sued alone. As the marriage vested the husband with the personal property of the wife, it was simply logical that he should pay her obligations. So with the liability of the master for the acts of his servant, the whole theory is expressed in the maxim *qui facit per alium facit per se.* He who acts through another acts himself. How do these illustrations support the principle of liability without fault, Could a husband or master be held liable under the common law when the wife or servant had been guilty of no wrong? Would the common law have denied to the husband or master the right to provide that no tort had been committed by the wife or servant? The admiralty cases of The Osceola, 189 U. S. 158; The City of Alexandria, 17 Fed. Rep. 399, and the case of Scarff *v.* Metcalf, 107 N. Y. 211, seem to us equally inapplicable as authorities for the proposition that the law recognizes liability without fault. It is common knowledge that the contracts and services of seamen are exceptional in character. A seaman engages for the voyage. He is subject to physical discipline, and exposed to hardships and dangers peculiar to the sea. He is, in effect, a coadventurer with the master, and shares in the risks of shipwreck and capture, often losing his wages by casualties which do not affect workmen on land. For these and many other obvious reasons the maritime law has wisely and benevolently built up peculiar rights and privileges for the protection of the seaman which are not cog-

nizable in the common law. When he is sick or injured he is entitled to be cared for at the expense of the ship, and for the failure of the master to perform his duty in this regard the ship or the owner is liable. That is a right given to the seaman, and a duty enjoined upon the master, by the plainest dictates of justice, which arises out of the necessities of the case; and, because of the reason of the rule, the right and duty cease when the contract has terminated and the seaman has been returned to the port of shipment or discharge, or has been furnished with means to do so. But beyond this duty on the part of the master or owner there seems to be no liability whatever for injuries sustained by the seaman in the course of his work. We think it may confidently be asserted that within the whole range of the maritime law there will be found no rule which renders master, owner or ship liable in damages for an injury sustained by the seaman without fault on the part of anyone, or without any fault except his own. The case of Scarff *v.* Metcalf, 107 N. Y. 211, was not disposed of upon any such theory, but was based upon the neglect of the master to perform the duty of caring for the injured seaman imposed by the maritime law. The legal status of seamen is clearly illustrated in the case of Robertson *v.* Baldwin, 165 U. S. 275, where it was held that compulsory personal service of a seaman in performance of his contract was not a violation of the thirteenth amendment to the Federal Constitution forbidding slavery or involuntary servitude. In that case the learned justice who wrote for the court suggested that enforced service under a seaman's contract was not involuntary within the Constitution, although the contract would not be enforced by the courts. But in the later case of Clyatt *v.* United States, 197 U. S. 207, it was held that peonage or enforced service, whether under a voluntary contract of service or not, was involuntary servitude and forbidden by the Constitution in all cases save those arising out of the exceptional relations of the seaman to his ship, the child to its parents and the apprentice to his master. In the review in Robertson *v.* Baldwin, *supra*, of the various decisions in admiralty, it is made quite clear that the courts have always regarded seamen as irresponsible to a degree which makes them incapable of fully protecting their own rights. With the power given to the employer of seamen to compel specific performance of their contracts, there are imposed certain obligations unknown to any other relation. It is a relation which rests on affirmative law and not on natural right. We can find no analogy between a case arising out of such relation and one in which an adult of sound mind and capable of freely contracting for himself voluntarily enters upon employment from which he is at liberty to withdraw whenever he will.

"Great reliance is placed upon the case of St. Louis & San Francisco Ry. Co. *v.* Mathews, 165 U. S. 1, in support of the contention that there may be liability where there is no delinquency. That was an action brought by an owner of land adjoining the defendant's railroad to recover damages for the destruction of his dwelling house and other buildings, caused by fire which spread from sparks emitted by the defendant's locomotives. The action was brought under a statute of the State of Missouri which provided that 'each railroad corporation, owning or operating a railroad in this State, shall be responsible in damages to every person and corporation whose property may be injured or destroyed by fire communicated, directly or indirectly, by locomotive engines in use upon the railroad owned or operated by such railroad corporation; and each such railroad corporation shall have an insurable interest in the property upon the route of the railroad owned or operated by it, and may procure insurance thereon in its own behalf, for its protection against such damages.' The statute was upheld as being within the legislative power of the State. That decision is amply supported by a number of reasons which have no application to the controversy at bar. To begin with, the Constitution of Missouri contained a clause, which was in force when the railroad company obtained its charter, providing that 'the exercise of the police power of the State shall never be abridged, or so construed as to permit corpora-

tions to conduct their business in such manner as to infringe the equal rights of individuals, or the general well-being of the State.' (Missouri Const., art. 12, sec. 5.) Another ample reason is found in the fact that railroads alone 'have the privilege of taking a narrow strip of land from each owner, without his consent, along the route selected for the track, and of traversing the same at all hours of the day and night, and at all seasons, whether wet or dry, with locomotive engines that scatter fire along the margin of the land not taken, thereby subjecting all combustible property to extraordinary hazard of loss.' (Grissell *v.* Housatonic R. R. Co., 54 Conn. 447.) Then, again, 'the right to use the agencies of fire and steam in the movement of trains is derived from legislation of the State; and it certainly cannot be denied that it is for the State to determine what safeguards must be used to prevent the escape of fire, and to define the extent of the liability for fires resulting from the operation of trains by means of steam locomotives. This is a matter within State control.' (Hartford Ins. Co. *v.* Chi., Mil. & St. Paul Ry. Co., 62 Fed. Rep. 904.) A legislature may, if it chooses, make it a condition of the right to run carriages propelled by the agency of fire, that the corporation employing them shall be responsible for all injuries which fire may cause. (Ingersoll & Quigley *v.* Stockbridge & Pittsfield R. R. Co., 8 Allen 438; Grand Trunk Ry. Co. *v.* Richardson, 9 U. S. 454.) And, finally, these statutes are designed to protect the rights of those who have no contractual relations to the corporations which inflict the injury. In such a case, when both parties are equally faultless, the legislature may properly consider it to be just that the duty of insuring private property against loss or injury caused by the use of the dangerous instruments should rest upon the railroad company, which employs the instruments and creates the peril for its own profit, rather than upon the owner of the property who has no control over or interest in these instruments. Quite aside from the considerations which support such a statutory liability against railroad corporations, it may be added that it is in no sense an extension of the rule of the common law to modern conditions, but in reality a return to the original common-law doctrine under which every person who permitted fire started by him to escape beyond his house or close was liable to every one who suffered loss or injury thereby. The severity of that early English rule was moderated by numerous statutes, among which are 6 Anne and 14 Geo. III. As to these two last-mentioned statutes it has been held that they became by adoption a part of the common law of this State, under which neither individuals nor corporations are liable for escaping fire unless there is negligence. [Cases cited.] The cited cases arising out of injuries inflicted by animals of known dangerous or vicious propensities, and the liability which has often been imposed for the maintenance of private nuisances, we shall not discuss, for we think they are governed by well-settled principles which clearly have no application to the questions now before us.

"In the addenda to the instructive brief of the counsel for the commission our attention is called to three decisions of the Federal Supreme Court which have been but recently decided and not yet officially reported. (Noble State Bank *v.* Haskell, 219 U. S. 104; Assaria State Bank *v.* Dolley, 219 U. S. 121, and Engel *v.* O'Malley, 219 U. S. 128.) These cases, it is contended, strongly support the validity of the legislation which we are condemning because, as counsel asserts, they go directly to the ultimate question: 'Is the act an unreasonable regulation of the status of employment?' We have tried to make it clear that in our judgment this statute is not a law of regulation. It contains not a single provision which can be said to make for the safety, health or morals of the employees therein specified, nor to impose upon the enumerated employers any duty or obligation designed to have that effect. It does not affect the status of employment at all, but writes into the contract between the employer and employee, without the consent of the former, a liability on his part which never existed before and to which he is permitted to interpose practically no defense, for he can only escape liability when the employee is injured through his own wilful misconduct. That is a defense which needs no

legislative sanction, since it would be abhorrent to the most primitive notions of justice to permit one to impose liability for his wilfully self-inflicted injuries upon another who is wholly free from responsibility for them. The case of Engel *v.* O'Malley, *supra*, is so clearly distinguishable from the case at bar that we need only state the facts to mark the contrast. The Engel case arose under a New York statute which provides that individuals and firms shall not engage in the business of receiving deposits for safe-keeping or for transmission, or for any other purpose, or in the business of banking, without first obtaining from the State comptroller a license. The same statute further provides that applicants for such a license must pay a prescribed fee, give bonds and submit to other restrictions. We have already passed upon the constitutionality of certain parts of that statute (L. 1907, ch. 185) in Musco *v.* United Surety Co., 196 N. Y. 459, which was an action upon a bond given under it, and have held that 'the regulation of the business of receiving deposits is plainly within the power possessed by the State to regulate the conduct of various pursuits when necessary for the protection of the public' (p. 465). The portion of the statute under consideration in the last cited case was plainly directed against an obvious evil which vitally affected the public welfare. The city of New York is the gateway through which this country admits each year thousands of poor and ignorant immigrants who deal with individuals and firms engaged in the business of exchanging domestic for foreign money, receiving deposits and transmitting remittances to foreign ports. It is a business which may, and probably does, attract some irresponsible and mercenary adventurers. A law designed to regulate and safeguard such a business in a way which affects no constitutional property rights is plainly within the police power of the State. That is all that was involved in the Musco case, and that is the extent to which this court has passed upon the constitutionality of the New York statute (L. 1907, ch. 185). It need hardly be argued that a law passed under the guise of such a purpose, but having in fact no relation to it, and accomplishing nothing to make the business of receiving deposits more safe, would be as far beyond the sphere of the police power as an amendment to the banking law requiring banks and bankers to protect their customers, to whom they pay moneys, against thefts or other physical losses thereof; or an amendment to the labor law which would compel the industrial employers to give each employee a vacation on full pay during two months of every year.

"As to the cases of Noble State Bank *v.* Haskell, 219 U. S. 104, and Assaria State Bank *v.* Dolley, 219 U. S. 121, we have only to say that if they go so far as to hold that any law, whatever its effect, may be upheld because by the 'prevailing morality' or the 'strong and preponderant opinion' it is deemed 'to be greatly and immediately necessary to the public welfare,' we cannot recognize them as controlling of our construction of our own Constitution. That the business of banking in the several States may be regulated by legislative enactment is too obvious for discussion. That the extent to which such State regulation may be carried must depend upon the difference in constitutional provisions is also plain. How far these late decisions of the Federal Supreme Court are to be regarded as committing that tribunal to the doctrine that any citizen may be deprived of his private property for the public welfare we are not prepared to decide. All that it is necessary to affirm in the case before us is that in our view of the Constitution of our State the liability sought to be imposed upon the employers enumerated in the statute before us is a taking of property without due process of law, and the statute is, therefore, void.

"The judgment of the appellate division should be reversed and judgment directed for the defendant, with costs in all courts."

Chief Justice Cullen, concurring, said:

"I concur in the opinion of Judge Werner for reversal of the judgment appealed from. I concede that the legislature may abolish the rule of fellow-servant as a defense to an action by employee against the employer. Indeed, we have decided that in upholding the so-called Barnes act.

(Schradin *v.* N. Y. C. & H. R. R. R. Co., 194 N. Y. 534.) I concede that the legislature may also abolish as a defense the rule of assumption of risk and that of contributory negligence unless the accident proceed from the wilful act of the employee. I concede that in a work, occupation or business of such a nature that the legislature might prohibit its pursuit or exercise altogether, the legislature may prescribe terms under which it may be carried on. Plainly this litigation does not present such a case. The legislature could not revoke the franchise it had previously given to the defendant to operate a railroad. (People *v.* O'Brien, 111 N. Y. 1.) I am not prepared to deny that where the effects of the work, even though prosecuted carefully, go beyond a person's own property and injure third persons in no way connected therewith, the person for whose account the work is done may be held liable for injuries occasioned thereby. I also concede the most plenary power in the legislature to prescribe all reasonable rules for the conduct of the work which may conduce to the safety and health of persons employed therein. But I do deny that a person employed in a lawful vocation, the effects of which are confined to his own premises, can be made to indemnify another for injury received in the work unless he has been in some respect at fault. I am not impressed with the argument that 'the common law imposed upon the employee entire responsibility for injuries arising out of the necessary risks or dangers of the employment. The statute before us merely shifts such liability upon the employer.' It is the physical law of nature, not of government, that imposes upon one meeting with an injury the suffering occasioned thereby. Human law cannot change that. All it can do is to require pecuniary indemnity to the party injured, and I know of no principle on which one can be compelled to indemnify another for loss unless it is based upon contractual obligation or fault. It might as well be argued in support of a law requiring a man to pay his neighbor's debts that the common law requires each man to pay his own debts, and the statute in question was a mere modification of the common law so as to require each to pay his neighbor's debts. It is urged that the legislation before us can be upheld on the decision of the Supreme Court of the United States in Noble State Bank *v.* Haskell, 219 U. S. 104. In support of the claim there is cited from the opinion the following: 'It may be said in a general way that the police power extends to all the great public needs. (Camfield *v.* United States, 167 U. S. 518.) It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare.' (p. 111.) It is possible that the doctrine of these two sentences would justify the statute before us and possibly any legislation, if only supported by a sufficient popular demand, but it is both unfair and unsafe to excerpt fragmentary sentences from the opinion of a court and interpret them apart from the context of the whole opinion. However that may be, the decision in the Noble Bank case is not controlling upon this court in the construction of the Constitution of our own State, and I am not disposed to accept it, at least, until it has received the approval of a majority of the court. I concur with Judge Werner that the act, as applicable to the case before us, cannot be considered as an exercise of the power of the State to regulate corporations. The act is general, not confined to corporations, and, even if it were, I think its effect would be a deprivation of property not authorized by the reserved power to regulate.

"As to corporations hereafted formed, the question is very different. The franchise to be a corporation is not one inherent in the citizen, but proceeds solely from the bounty of the legislature, and for that reason the legislature may dictate the terms on which it will be granted and require the acceptance of the provisions of this act as a condition of incorporation. (Purdy *v.* Erie R. R. Co., 162 N. Y. 42; Minor *v.* Erie R. R. Co., 171 N. Y. 566; People *ex rel.* Schurz *v.* Cook, 110 N. Y. 443; S. C., 148 U. S. 397; Chicago, R. I. & Pac. R. Co. *v.* Zernecke, 183 U. S. 582.) Even in the case of existing corporations, the corporate existence of all those created since the Constitution of 1846 may be revoked by the

legislature, though the property rights of such corporations and their special franchises other than the one to be a corporation cannot be impaired. (Const., art. 8, sec. 1; Lord *v.* Equitable Life Assur. Socy., 194 N. Y. 212.) The property and franchise would have to be managed by the owners as partners or tenants in common, and the legislature might require as a condition of the continued right to be a corporation that before the expiration of a reasonable period the provisions of the statute should also be accepted by them. They are in the condition of a tenant at will who, when the landlord raises the rent, must either comply with his terms or, after the expiration of a reasonable time prescribed by a notice to quit, surrender his rights under the lease. But individual citizens, following the ordinary vocations of life, asking no favors of the government, whether a corporate or other franchise, but only the protection of life and property, which every government owes to its citizens, and guilty of no fault, cannot be compelled to contribute to the indemnity of other citizens who, by misfortune or the fault of themselves or others, have suffered injuries, except by the exercise of the power of taxation imposed on all, at least all of the same class, for the maintenance of public charity. Of course, I am not now referring to obligations springing from domestic relations."

EMPLOYERS' LIABILITY — DEPARTMENTS OF LABOR — CONSTRUCTION OF STATUTE—*Judd v. Letts, Supreme Court of California, 111 Pacific Reporter, page 12.*—Frances Augusta Judd was employed by Arthur Letts as a saleswoman in his store, and at the close of her day's labor on February 21, 1908, she entered an elevator to go for her wraps on another floor of the building. By the negligence of the elevator operator, as was alleged, Miss Judd was injured, and she sued to recover damages for her injuries. Damages were awarded in the Superior Court of Los Angeles county, and this judgment was, on appeal, affirmed.

The decision turned on the construction of section 1970 of the Civil Code as amended in 1907 (Acts of 1907, ch. 97). The particular point involved was the meaning of the words "department of labor" as used in this statute. The view taken by the court is set forth in that portion of its opinion here reproduced, which was delivered by Judge Sloss September 8, 1910. Judge Sloss said, in part:

"Prior to 1907, the section read as follows: 'An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless the negligence causing the injury was committed in the performance of a duty the employer owes by law to the employee or unless the employer has neglected to use ordinary care in the selection of the culpable employee.' The amendment added this proviso: '*Provided, nevertheless,* That the employer shall be liable for such injury when the same results from the wrongful act, neglect or default of any agent or officer of such employer, superior to the employee injured, or of a person employed by such employer having the right to control or direct the services of such employee injured, and also when such injury results from the wrongful act, neglect or default of a co-employee engaged in another department of labor from that of the employee injured, or employed upon a machine, railroad train, switch signal point, locomotive engine, or other appliance than that upon which the employee injured is employed, or who is charged with dispatching trains, or transmitting telegraphic or telephonic orders upon any railroad, or in the operation of any mine, factory, machine shop, or other industrial establishment.' While the proviso is framed in a manner that may leave a doubt concerning the proper relation of some of the phrases, we think it quite clear that the intent of the amendment was to take from all classes of employers the benefit of the fellow-servant rule, in cases where the employee injured

and the one at fault are engaged in different departments of labor. The appellant argues that the concluding words of the proviso, 'upon any railroad, or in the operation of any mine, factory, machine shop, or other industrial establishment,' qualify all the preceding clauses following the words 'and also.' So arguing, he claims that the Broadway Department Store is not a railroad, mine, factory, machine shop, or other industrial establishment, and that therefore the 'department of labor' exception has no application. There is no rule of grammatical construction which requires that the final clause be given the effect claimed. The interpretation thus urged would, we think, unduly limit the effect of the proviso.

"This brings us to a consideration of the meaning of the phrase 'another department of labor.' The general rule exempting employers from liability for injuries sustained by one servant through the negligence of another servant in the same common employment has been declared, in the absence of any statute on the subject, by all the courts applying the doctrines of the common law. The decisions are by no means in accord with respect to the fundamental reason or basis for the rule, and this phase of the subject has called forth the expression of a multitude of varying views. With a discussion of these we need not here concern ourselves. So, too, the courts have differed in their attempts to define the relation of common service. In the absence of any statutory limitation of the doctrine, there have been in some jurisdictions decisions denying to the employer exemption in cases where the injured employee and the one whose negligence was asserted were not 'consociated' in the same 'department,' or 'line of employment.' In this State no such modification had ever, prior to the amendment of section 1970, been recognized. That section, as it formerly stood, was regarded as declaratory of the common law (Congrave *v.* S. P. R. R. Co., 88 Cal. 360, 26 Pac. 175); under its terms, a common employment existed when each of the servants in question was employed 'in the same general business' (Mann *v.* O'Sullivan, 126 Cal. 61, 58 Pac. 375, 77 Am. St. Rep. 149).

"It would seem clear from these considerations that the purpose of the amendment to section 1970 was to modify, in the interest of those employed, the rigor of the rule which, in many cases, denied them relief for loss or injury sustained without their fault. The enactment is remedial in character, and should be construed liberally with a view to carrying out the object sought. Such appears to have been the tendency of the courts in dealing with similar statutes. The term 'department of labor' used in our statute has failed to receive definition at the hands of the legislature, and must, therefore, be construed by the courts according to the ordinary significance of the words used, taken in connection with the apparent purpose of enactment.

"It would be difficult, if not impossible, to formulate a definition of the phrase 'department of labor' in such terms as to furnish an exact test by which to determine on any given state of facts whether two employees are in different departments. In a general way it may be said that the question of identity of department is to be determined by inquiring, among other things, whether the employees in question are habitually associated or brought together in the performance of their duties, whether they are under the immediate direction and control of the same superior, and whether the duties of one have any relation to or connection with those of the other. Where the facts are disputed, or, if undisputed, are such as to reasonably permit contrary inferences, the jury should be permitted to determine whether the servants were engaged in the same department of labor. But, where the facts are such that reasonable minds could not differ as to the conclusion, the question becomes one of law for the court. In Morgan *v.* J. W. Robinson Co., 107 Pac. 695, the only case in which we have had occasion to consider the effect of the amendment of section 1970, the court had no hesitation in declaring that, as matter of law, the employees there involved (*i. e.*, a carpenter engaged in the construction of a building and a man operating a freight elevator used in a retail store) were engaged in different departments of labor. We are satisfied that

the same result must be reached on the facts here shown. The plaintiff's only duties were those connected with the sale of cloaks and suits. The operation of the passenger elevator was an entirely separate and distinct branch of service. There was no relation between the two beyond the fact that, at the close of her day's service, the plaintiff was permitted, for her convenience, to use the elevator in going from her place of work to the dressing-room. It could not be said that she and the elevator boy were engaged in the same department of labor without perverting the ordinary meaning of words and destroying the effect of the amendment. The court rightly instructed the jury with reference to this point."

EMPLOYERS' LIABILITY—FELLOW-SERVANT LAW—NATURE OF LIABILITY—INJURIES CAUSING DEATH—SURVIVAL OF RIGHT OF ACTION—DAMAGES—*Beeler v. Butte & London Copper Development Company, Supreme Court of Montana, 110 Pacific Reporter, page 528.*—Edwin Beeler was killed while in the employment of the company named above as a pump man in one of its mines. This action was brought by his heirs to recover damages under the provisions of section 5248 to 5250 of the Revised Codes of Montana, and from a judgment in their favor in the District Court of Silver Bow county the company appealed. The appeal resulted in the judgment of the lower court being affirmed, as appears from the following quotations from the opinion of the court as delivered by Judge Sanner. Numerous errors were alleged as grounds for reversal of the judgment, but these were reduced to a few general propositions, which the Supreme Court discussed in part as follows. Taking up the first objection raised, Judge Sanner said:

"It is urged that the complainant fails to state a cause of action in this: (a) That the action is not maintainable by plaintiffs, since it does not survive to the heirs but only to the personal representatives of the person injured; (b) that the action is upon a liability created by statute, and, having been commenced more than two years after the cause of action accrued, it is barred by the provisions of subdivision 1, section 6449, Revised Codes.

"(a) The authority for this action is in the act approved February 20, 1905 (ch. 23, p. 51, Laws 1905), re-expressed in sections 5248, 5249 and 5250 of the Revised Codes. In section 5250 it is expressly provided that the right of action shall survive and may be prosecuted and maintained by the heirs or personal representatives of the person injured. The complaint alleges that the plaintiffs are the widow and child, respectively, and that there are no other heirs, of the person injured and since deceased. This is a sufficient answer as to the right of plaintiffs to maintain this suit.

"(b) The theory of limitation, as disclosed in the chapter of the Code on that subject, has no reference to the defenses that may or may not be interposed in resistance to a plaintiff's demand; but it is grounded in every instance upon the nature of the demand itself—whether it be upon a judgment, written contract, account, etc. Subdivision 1, section 6449, must be viewed in the light of the fact that the phrase 'liability created by statute' has come to have a fixed application to a class of cases quite distinct from those elsewhere mentioned or referred to in the same chapter. If the action at bar had been for injuries resulting from the negligence of a vice principal, instead of a fellow-servant, it would be recognized at once as a straight action in tort, governed, as to its limitation, without any thought of its being a 'liability created by statute.' Now, the fact that the injury, which is the basis of the action, resulted from the negligence of a fellow-servant, instead of a vice-principal, does not affect the essential nature of the action; it is still an action for personal injuries founded upon actionable negligence. And while it may properly be said (see Kelly *v.* Northern Pacific Ry. Co., 35 Mont. 243, 88 Pac. 1009) that under the act approved February 20, 1905, an employer's liability exists where none existed before, yet the true function of that act must

be regarded, not as creating a new cause of action, but merely to carry forward the right of the injured party and to remove a defense theretofore available in this class of causes (Dillon *v.* Great Northern Ry. Co., 38 Mont. 485, 100 Pac. 960). It follows that in the sense employed by the chapter on limitations of actions this is not an action on a 'liability created by statute,' and the contention that it is barred by subdivision 1, section 6449, is not sound. Such being our conclusion, it is unnecessary to consider whether, under the conditions presented by the record, the statute of limitations could be available to appellant in the absence of a special plea thereof."

The nature of the accident and the acts that caused it were then reviewed, with the conclusion that it resulted from the negligence of a fellow-servant, and that, while Beeler was dead at the time when he was discovered, it does not appear that death was instantaneous, but, on the contrary, that there was sufficient competent evidence to support the conclusion that he lived an appreciable time after the injuries were sustained. These facts were regarded by the court as sufficient to warrant the refusal of the court below to direct a verdict for the defendant company.

Of the other points considered, none of which was found to furnish a basis for interfering with the judgment of the lower court, only that relating to the grounding of a claim for damages need be noted. On this point Judge Sanner said:

"Complaint is made of instruction F, as follows: 'The court instructs the jury that if under all the evidence and all of the instructions of the court your verdict should be for the plaintiffs and against the defendant, then it will be necessary for you to assess and write into that verdict the amount of damages caused proximately to Edwin Beeler by the acts, if proven, of the hoisting engineer. In determining this amount you are limited to a sum of money which would have compensated Edwin Beeler for the pain and suffering of mind and body which the injuries caused (if any such pain and suffering were caused) between the time that he was injured and the time he died, if he survived the injuries for any length of time, and to the further sum that would have compensated him, unless you find that death was instantaneous, for the impairment, if any, which was caused by the injuries, of his capacity to earn money in the future if he had not been injured. Now, gentlemen, the amount sued for and claimed in the complaint of $25,000 must not be to you any criterion in determining the amount of your verdict, if you do render any, in favor of the plaintiffs, but I charge you that in no event shall your verdict be in excess of the amount of $25,000.'

"We see no error here. The phrase 'any length of time' read in juxtaposition with the phrase 'unless you find death was instantaneous' makes it clear that the court intended to advise the jury that there must have been an appreciable period of suffering. The statute authorizing this suit gives to the heirs the right to prosecute and maintain the same action that the injured man could have maintained had he lived. Unquestionably his right of action included damages for the pain and suffering that he endured and for his diminished and lost earning capacity for the period of his natural expectancy. No reason exists why the scope of the action should diminish because of his death; to inject such a change into the statute would do violence to its language, and would, *pro tanto* at least, destroy its very purpose."

EMPLOYERS' LIABILITY—MINE REGULATIONS—SHOT FIRERS—CONSTRUCTION OF STATUTE—*Hougland et al. v. Avery Coal & Mining Company, Supreme Court of Illinois, 93 Northeastern Reporter, page 40.*—Blanche Hougland and others had sued the company named to recover damages for the death of William Stevenson and William Hougland as the result of an explosion in a mine operated by the company. Judgment was granted in favor of the plaintiffs, and the company appealed, alleging various grounds for reversal, none of which was allowed, and the judgment was affirmed.

Various points were raised by the company, of which but one is of sufficient general importance to call for consideration here. This was the contention that a shot firer is not protected by the laws of Illinois (Acts of 1905, p. 328, as amended by Acts of 1907, p. 401; twenty-second annual report of the Commissioner of Labor, 1907, pp. 370, 371). On this point Judge Farmer, speaking for the court, said:

"The principal ground upon which plaintiff in error asks a reversal of these judgments is that a shot firer does not come within the protection of the general act concerning mines and miners. The shot firers' act was originally passed in 1905 (Laws 1905, p. 328), and was amended by the addition of three sections in 1907 (Laws 1907, p. 401). The amendments, however, do not affect the decision of the question raised by the plaintiff in error. The reason given by plaintiff in error for its contention that shot firers are not within the protection of the general act concerning mines and miners is that the shot firers' act is a separate and independent legislative enactment in nowise amendatory of the general act; also, that shot firers are experts to whom the entire mine is turned over when they commence the discharge of their duties, and no inspection is required or can be made after the miners quit work and before the shot firers enter upon the discharge of their duties. In Davis *v.* Illinois Colleries Co., 232 Ill. 284, 83 N. E. 836, a shot firer was held to be within the protection of the general act concerning mines and miners. This case was cited with approval in Brennen *v.* Chicago & Cartersville Coal Co., 241 Ill. 610, 89 N. E. 756, where it was said the provisions of the general act 'are for the safety and protection of all who are employed in the mine, including engineers, firemen, pump men, shot firers, drivers, and other workmen and employees.'

"Plaintiff in error insists that since those cases were decided this court has held in Hollingsworth *v.* Chicago & Carterville Coal Co., 243 Ill. 98, 90 N. E. 276, that the shot firers' act is an independent act, and not an amendment to the general mining act, and that the decisions in those cases are therefore no authority. We cannot agree to this position. In the Hollingsworth case the coal company did not employ shot firers, and the shot fired by one of the miners caused an explosion, resulting in the death of another miner. The widow of the deceased brought an action against the coal company, and alleged as a ground of recovery that the mine was of such condition and character that the law required shot firers to be employed therein, and that the coal company wilfully failed to employ shot firers, by reason whereof her husband was killed. We held the shot firers' act being no part of the general mines and miners' act, but being an independent act, and containing no provision authorizing a widow to sue for damages for failure to comply with its provisions, as is the case with the general act, the suit could not be maintained. There is no intimation in the opinion in that case that shot firers are not within the protection of the general act, and that decision is in nowise inconsistent with the previous decisions of this court holding that they are within the protection of said act.

"Complaint is made of the ruling of the trial court in permitting witnesses experienced in the business of mining and shot firing to testify, over the objection of plaintiff in error, that the shot in the second west entry was a workmanlike and practical shot. One of these witnesses prepared the shot, another saw it before it was fired, and the others made their examinations afterwards. Some of them testified it split the coal so that it was easily mined afterwards, but did not knock it down, as is usually the case. Some of them called it a 'standing shot.' All testified that it was prepared in a workmanlike and practical manner. It is conceded by the plaintiff in error that the subject was one for expert testimony, and no complaint is made that the witnesses did not possess the proper qualifications. The contention is that they should not have expressed any opinions, but that they should have described the shot and left it to the jury to determine whether it was a workmanlike and practical shot. Without stopping to inquire whether the latitude allowed by the court is too broad, it is sufficient to say that whether it was or not could have no controlling force on

our decision. If the explosion occurred from the wilful failure of plaintiff in error to provide proper air currents and keep the roadways cleaned and sprinkled, as charged in the declaration, contributory negligence of the deceased in firing a shot prepared in an unskillful manner would not defeat a recovery. (Davis *v.* Illinois Collieries Co., *supra.*)"

EMPLOYERS' LIABILITY—NOTICE—SUPERINTENDENCE—CONSTRUCTION OF STATUTE—*Smith v. Milliken Brothers, Court of Appeals of New York, 98 Northeastern Reporter, page 184.*—James Smith sued the company named on account of an injury received by him while in their employment. Smith was engaged in adjusting some heavy machinery in the plant of his employers and was standing on a cog-wheel not at that time in motion. While he was in this position one C. E. Smith, who was in immediate charge of the work being done, directed one Miller, who was the superintendent in general charge of the work, to start the machinery, with the result that James Smith suffered injury. Judgment had been rendered in James Smith's favor in the courts below and on appeal this judgment was affirmed in the court of appeals.

The question was raised as to the sufficiency of the notice served under the liability law of the State (Consolidated Laws, ch. 31). On this point Judge Hiscock, who delivered the opinion, found that no material defect in the notice existed, saying that while it was not a model in form, it did state with all necessary completeness the time and place and the nature of the injuries; also that the employer was apprised with reasonable certainty of the real cause of the accident, so that though there were admitted inaccuracies in the notice there was not sufficient lack of definiteness to invalidate it as given.

The point about which the strongest contention was made was that C. E. Smith, who gave the order resulting in the injury, was not under the act performing the work of a superintendent, but that since Miller, who was his superior, was present, any negligence of C. E. Smith would be nothing more than the act of a fellow-servant. On this point Judge Hiscock spoke in part as follows:

"There was evidence that Miller, the superintendent, directed respondent (James Smith) to obey the orders of Smith, and that he had been doing so for some time. While Miller had charge of a large number of men, Smith also had charge of a considerable number who were subject to his orders, and some or all of whom were engaged at the time in work upon this machine. He directed the respondent what to do at the time he was injured, and he was occupying a position on the machine where he could observe the work which was being done and give directions in connection therewith, while Miller, who, generally speaking, was his superior, was on this occasion engaged in performing part of the manual labor connected with adjusting the machine and was not giving any orders.

"The mere presence of a superior does not necessarily prevent a subordinate from acting as a superintendent. This is apparent, and the principle was practically involved and settled in Anderson *v.* Penn. Steel Co., wherein a judgment for the plaintiff was affirmed. (197 N. Y. 606, 91 N. E. 1100.) In that case the intestate was killed through the alleged negligence in superintendence of one Lannon, who was a mere 'pusher' or foreman of a gang of men in removing some steel work in connection with Blackwell's Island bridge, while one Wright was foreman in general charge. The court was asked to charge 'that if they find Wright, the foreman, was present at the time of the accident, Lannon cannot be treated as superintendent within the meaning of the law.' It declined so to do, and instead charged: 'If Wright was present and engaged in superintendence of this particular work upon which the decedent was engaged at the time of the accident, then they cannot find that Lannon was there acting as superintendent.' This was excepted to, and, of course, approved by the affirmance of the judgment."

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—STREET RAILWAYS—CONSTRUCTION OF STATUTE—*Conover v. Public Service Railway, Supreme Court of New Jersey, 78 Atlantic Reporter, page 187.*—This was an action brought by James W. Conover against the railway company named to recover damages for injury received by him while in the employment of the corporation named in the operation of a street railway. The declaration was demurred to by the company on the ground that the statute in question (paragraph 3 of section 1 of chapter 83 of the Laws of New Jersey of 1909) related to steam railways and not to street railways. This view was taken by the Supreme Court of the State, which held that the statute creating liability for the injury or death of a person occasioned "by reason of the negligence of any person in the service of the employer who has the charge or control of any signal, switch, locomotive engine or train upon a railroad" could not under the construction placed upon other legislation of the State be held to apply to street railways. The concluding paragraph of the opinion, which was delivered by Judge Minturn, is as follows:

"We can give to the words 'locomotive engine' or 'train upon a railway,' as employed in this act, the construction contended for by the demurrant, so as to apply it to street railways, only by indulging in a liberality of construction and interpretation radically divergent from the accepted use of the words in popular and colloquial phrase and totally opposed, as has been seen, to the hitherto legislative and judicial acceptation of the terms. The collocation of these terms, 'signal, switch, locomotive engine or train upon a railroad,' affords some aid in enabling us to determine the legislative intent by according to them, as we must under the familiar canons of construction, their ordinary and common meaning in the absence of a legislative intent to the contrary, and a similar result is reached by the application of the maxim of construction, '*Noscitur a sociis.*' (Black. Int. Laws, 135; Bacon's Ab. 4, p. 26; Bishop *v.* Elliott, 11 Exch. 113.) The plain inference from this collocation is that the legislature in enacting the legislation in question had in mind that public policy of differentiation between two dstinct systems of railroads which has consistently marked the legislation upon the subject and which has been repeatedly recognized by judicial determination as the declared public policy of the State."

EMPLOYERS' LIABILITY—RAILROADS—FEDERAL STATUTE—JURISDICTION OF STATE AND FEDERAL COURTS—INTERSTATE COMMERCE—CONSTRUCTION OF STATUTE—*Colasurdo v. Central Railroad of New Jersey, United States Circuit Court, Southern District of New York, 180 Federal Reporter, page 832.*—Michael Colasurdo was a track-walker, assisting in the repair of a switch on the above-named railroad on the evening of December 25, 1908, and while so engaged was injured by being struck by one of the four cars that were running down the track without a locomotive. There were three men at the switch, each with a lantern, and Colasurdo had his back to the cars by which he was injured. It was in evidence that the cars carried no light, and while there was a man on the cars who saw the lights of the three workmen, he testified that he thought their attention had been attracted to the cars and that they would move in time to escape injury.

Suit was brought by Colasurdo in a State court, but was removed by the defendant company to a Federal court on grounds of diversity of citizenship of the plaintiff and the employing company. During the trial it was shown that both parties were citizens of New Jersey, whereupon the company sought to have the case remanded to a State court for failure of jurisdiction of the Federal court. Inasmuch as the action was brought under the Federal statute of April 22, 1908 (35 Stat. 65), the court retained the case as involving the construction of a Federal statute, and judgment was given for the plaintiff. The present case was the hearing of a motion for a new trial, which was refused, and judgment was directed on the verdict.

The various points were taken up in order by Judge Hand, speaking for the court, who delivered his opinion July 1, 1910. Having stated the facts as above, Judge Hand said:

"The question is squarely raised in this case of the jurisdiction of this court. In so far as it depends upon diverse citizenship, the case must be remanded under act March 3, 1875, c. 137, 18 Stat. 470 (U. S. Comp. St. 1901, p. 507). If, however, the dispute or controversy is one arising under a law of the United States, then this court has jurisdiction, and it makes no difference that the defendant could not have been originally sued in such a controversy outside of its domicile. Such a dispute or controversy is within its jurisdiction if the correct construction of the law, which is laid in the complaint as the basis of the right of action, is necessarily involved in the decision, and it is quite clear in this case that it is necessary to determine the meaning of the phrase 'person employed by such carrier in such commerce.' Therefore this court has jurisdiction, even though the complaint should be dismissed because the plaintiff was not a person so employed. In short, a decision of the meaning of that act is necessary, and such a necessity gives me jurisdiction, regardless of the result of the case.

"Coming, then, to the merits, I will take up the points raised by the defendant *seriatim*. First, upon the motion to direct a verdict, I think that the refusal was proper. From the evidence the jury could have found that the plaintiff, who was under the orders of Nighland, and had been standing facing east so that the train came upon him from the rear, while Nighland himself was at work facing either south or west, and the other track-walker stood apparently between the two. If this was the relative position of the three men, the jury could have found that the plaintiff was relying upon the other track-walker or Nighland to look west and to observe the trains. If both failed to warn plaintiff of the train coming from that direction, the accident was due to their negligence in a duty reasonably imposed upon them, and, though they were fellow-servants, yet under this statute their negligence was that of the master. The fellow-servant rule has been so much ingrained in both bench and bar that this point was not made on the trial, but it was directly in the evidence and justified a refusal to dismiss for lack of the defendant's negligence.

"Besides, there was also evidence in the case that the rear of the train was not lighted, that no warning was given of the train's approach, and that the man at the rear, although he saw the lights, waited too long before trying to check the train. Since the accident happened at night, and the train was running swiftly and without any ready means of control, I think the case is clearly differentiated from Aerkfetz *v.* Humphreys, 145 U. S. 418, 12 Sup. Ct. 835, 36 L. Ed. 758; and I certainly do not think that as matter of law there was no negligence in operating in a freight yard four cars under their own impetus, after dark, without warning and without light. None of the cases cited by the defendant have a set of facts similar to this. Upon these two grounds, therefore, and without considering the question of the necessity of stationing a man to watch the three, I am satisfied that there was evidence of the defendant's negligence.

"The only important exception which remains is to that part of the charge which permitted the jury to find the defendant negligent in not stationing some one to watch the gang of men while at work. It was possible under the charge for the jury to find that, although there were lights upon the train, and that the trainman acted reasonably in not trying to stop the train before he did, yet the defendant was negligent in not giving standing instructions in such cases for some employee to watch for trains.

"Such a person might have to engage in the work from time to time; but it is at least a fair question of fact whether some one should not all the time watch for the approach of trains. Had I myself sat upon such a jury, I should have thought that it was a reasonable necessity for the safety of the men, regardless of the practice of other roads, and that a railroad should have a rule instructing its employees always to maintain

a watch while at work in the dark. It seems quite clear that unless this is done the attention of all will of necessity at times become directed upon the work rather than upon the danger.

"The remaining question is of the application of the act of 1908, and that turns on whether the plaintiff was employed in interstate commerce: The act in question was passed after the decision of the Supreme Court in the Employers' Liability cases, 207 U. S. 463, 28 Sup. Ct. 141, 52 L. Ed. 297, in which a similar act was declared unconstitutional by a divided court, because it applied generally to all carriers engaged in interstate commerce. Some questions, however, were decided by the whole court in those cases, and one of these was that the act was not unconstitutional because it regulated the relation of master and servant, all the justices recognizing that Congress might regulate those relations while the master and servant were employed in interstate commerce. The present act was clearly passed to meet the objection of that decision, and I think it should therefore be construed as intending to include within the term 'person employed in such commerce' all those persons who could be so included within the constitutional power of Congress—that is to say, the act meant to include everybody whom Congress could include. Under this construction the inquiry becomes whether Congress could constitutionally have passed a statute regulating the relation between a carrier-master and a servant who was engaged in the repair of a track used both for interstate and intrastate commerce. Preliminarily the distinction should be noted that the act will not necessarily apply to the same person in all details of his employment. One man might have duties including both interstate and intrastate commerce, and he would be subject to the act while engaged in one and not the other. This being so, the question is whether his repairing of a switch is such employment, when the switch is used indifferently in both kinds of commerce. Suppose the track had crossed a corner of a State, and there was only one station within that State, so that all trains crossing over that track must necessarily be engaged in interstate commerce. Would not a track-worker engaged in the repair of such a track be engaged in interstate commerce? I do not think that he would be any the less so engaged than the engineer on the locomotive or the train dispatcher who kept the trains at proper intervals for safety. Of course, it is not necessary that the man must personally cross a State line. If the repair of such a track be interstate commerce, does it cease to be such because there are two stations within the State and some of the trains start at one and stop at the other? I cannot think that this is true, although counsel have referred me to no case upon the subject and I have found none. The track is none the less used for interstate commerce because it is also used for intrastate commerce, and the person who repairs it is, I think, employed in each kind of commerce at the same time.

"Despite the earlier ruling in Gibbons *v.* Ogden, 9 Wheat. 1, 6 L. Ed. 23, it has in recent times been stated several times by the Supreme Court that State statutes may indirectly regulate interstate commerce, even though Congress may at any time itself, under its proper constitutional powers, enact a provision of directly opposite tenor. (Sherlock *v.* Alling, 93 U. S. 99, 23 L. Ed. 819; Reid *v.* Colorado, 187 U. S. 137, 23 Sup. Ct. 92, 47 L. Ed. 108.) If, as was held in those cases, a State has the power to regulate such commerce until Congress intervenes, because it is as well within the State's proper powers, must not the corollary be true as well that Congress may intervene, even when the effect of that intervention be incidentally the regulation of intrastate commerce as well? Could not Congress, for example, provide that all tracks used in interstate commerce must be of a standard width and weight? Would that not affect all tracks used in such commerce, although they likewise were used for intrastate commerce? Of course, anyone could use any other tracks he chose for intrastate commerce; but it can surely not be a ground to limit Congress' proper powers that the track has a joint use. If so, the repair of such tracks must be a part of interstate commerce, and under the Employers' Liability cases,

supra, the relations of master and servant arising between the railroad and its employees engaged in repairing the track are similarly within the power of Congress.

"I am, therefore, of opinion that the plaintiff was at the time engaged in interstate commerce and entitled to the rights secured by this act. That being so, it is a matter of no consequence whether the train that struck him was engaged in that commerce or not. It is true that the act is applicable to carriers only 'while engaged' in interstate commerce, but that includes their activity when they are engaging in such commerce by their own employees. In short, if the employee was engaged in such commerce, so was the road, for the road was the master, and the servant's act its act. The statute does not say that the injury must arise from an act itself done in interstate commerce, nor can I see any reason for such an implied construction.

"I will, therefore, deny the new trial and direct judgment on the verdict. The defendant, if it wishes, may have a certificate on the jurisdictional point direct to the Supreme Court, though that opens only a limited review."

HOURS OF LABOR OF EMPLOYEES ON RAILROADS—FEDERAL STATUTE—TIME ON DUTY—*United States v. Illinois Central Railroad Company, United States District Court for the Northern District of Iowa, 180 Federal Reporter, page 630.*—The United States brought an action against the company named for a violation of the law of March 4, 1907 (34 Stat. 1415), which limits the hours of labor of certain employees on railroads to sixteen in any twenty-four-hour period. The particular point involved was the rule of the company requiring men to report thirty minutes before the time for their trains to leave, which time the company contended should not be counted as a part of the duty period. This view was rejected by the court, as appears from the following quotation from the opinion, which was delivered by Judge Morris:

"The question here is as to the effect of the rule of the company requiring men to report thirty minutes before the leaving time of the train to do the things required by the rule, coupled with the fact that this man did comply with that rule.

"I do not think the custom of the company not to strictly enforce the rule makes any difference. This man complied with the rule. He arrived at the engine thirty minutes before the leaving time of the train, and was actually engaged in doing the things required by the rule; and the question here is whether he was during that time, within the meaning of the act, actually engaged in or connected with the moving of that train. That is the question here. In my opinion this man was on duty, within the meaning of the act, from the time he went there and commenced to supervise, or overlook, that engine in preparation for the trip. It does not make any difference whether he was paid for this time or not. That was the time his work and the strain on him began. The work of an engineer, an employee of the railroad, begins when under the rule of the company he is there and is at work in connection with the preparation of the engine for the moving of the train. He must look over that engine. He must see that it is oiled up. He must see that the air brakes are all right. He must move the engine down over the tracks and across the switches to connect it with the train. And in my opinion he is on duty, within the meaning of the act, during the time he is doing these things. If he goes there a half an hour before the time to start to do these things, during the time he is there doing them he is on duty. That is my view of it."

MINE REGULATIONS—INSPECTION—GOOD FAITH AS DEFENSE AGAINST LIABILITY FOR INJURY—*Aetitus v. Spring Valley Coal Company, Supreme Court of Illinois, 92 Northeastern Reporter, page 579.*—This was an action by Charles Aetitus to recover damages for an injury received by him on

January 21, 1907, while employed by the company named as a miner. Aetitus and another were directed by the mine manager to cut recesses for timbers in an entryway to be converted into a stable, and while so engaged rock fell upon and injured the plaintiff. The mining law of Illinois, chapter 93, Hurd's R. S. 1909, requires a legally qualified mine examiner to inspect working places before men are set to work therein and to mark dangerous places. The mine manager, the assistant mine manager and the mine examiner testified that they had each examined the working place in question and that it was not a dangerous place, so that no report of danger was made nor were any danger marks placed. The jury found on the evidence that the place was in fact dangerous and that it should have been so marked. Damages were awarded in the Circuit Court of Bureau county and affirmed on appeal to the appellate court. The company again appealed to the Supreme Court, which in turn affirmed the judgment for damages, June 29, 1910, though by a divided court. The point on which the court differed was as to the duty of the inspector and the employer's right to rest on a *bona fide* performance thereof. On this point Judge Hand, who delivered the opinion of the court, said in part:

"The case was apparently tried by plaintiff in error on the theory that if the mine examiner and the mine manager looked the place over where the injury occurred and thought it was not dangerous, and their determination of that fact was made in good faith, the plaintiff in error would not be liable for the injury to defendant in error even though the jury were justified, from the evidence, in finding the place was dangerous and should have been marked as a dangerous place; in other words, that 'good faith' on the part of the owner or operator of a coal mine in a suit for a wilful violation of the mines and mining act is a defense. We do not think the owner or operator of a mine can excuse himself from liability growing out of a wilful violation of the mines and mining act—that is, from a conscious violation of the act—in failing to properly examine the mine and mark dangerous places therein which are known to him, on the ground that his examiner or manager in good faith thought the place was not dangerous. If this were the law, the right of recovery would not rest upon a conscious violation of the statute, but upon the opinion of the owner or operator or his vice-principal—that is, his examiner or manager—as to whether the mine was safe or in a dangerous condition. It has been repeatedly held by this court that it is the duty of the owner or operator of a mine to have his mine examined and if it is in a dangerous condition to have the dangerous places designated by the statutory marks, and if he fails in either particular, with knowledge of its dangerous condition or with knowledge of facts from which he ought to know of its dangerous condition, he is liable to a person in the mine under his employ who is injured as a result of his wilful failure to obey the mandates of the statute. If the mine is in a dangerous condition, and the owner or operator has failed, with knowledge of its condition, to comply with the statute, he is liable, and he cannot excuse himself on the ground that he had the mine examined and in good faith thought it was not dangerous. His liability does not rest upon the ground that in good faith or bad faith he thought there was no danger in the mine, but upon the ground that he has, knowing the facts which made the mine dangerous, failed to have the statutory marks properly placed in the mine. When the mine owner or operator is advised of the conditions in the mine, he must place in the mine, if it is dangerous, the statutory marks, and, if he fails to do so, he acts at his peril, and he cannot excuse himself because he or his examiner or manager may think the mine safe. To so hold would be to permit the mine owner or operator, or his examiner or manager, to usurp the functions of the court and jury, and to pass upon a question which, in every case like this, is a matter of proof and is to be determined as a fact by the jury.

"It is said by the plaintiff in error that the duties imposed upon the owner or operator of a mine by the mines and mining act in some instances

are mandatory, while in others the performance of the duties imposed by that act upon the owner or operator involves the exercise of judgment, and that the performance of the latter class of duties, among which is that of discovering and marking dangerous places in the mine, involves only the exercise of good faith on the part of the owner or operator. We do not think the distinction pointed out a valid one, but are of the opinion this court is committed to a different doctrine. In Eldorado Coal and Coke Company *v.* Swan, 227 Ill. 586, 81 N. E. 691, the claimed violation was the failure to maintain a light at the bottom of the shaft. The evidence showed there was a light at that place, but was conflicting as to the size and power of the light. The statute required a light sufficient to show the landing and surrounding objects distinctly, and the contention was made that the determination of the question whether the light was sufficient to show the landing and its surroundings distinctly involved the exercise of judgment, and, if the appellant company had attempted in good faith to comply with the requirements of the statute in that particular, it was relieved from liability. The court held otherwise. On page 590 of 227 Ill., page 692 of 81 N. E., it was said: 'Appellant's most serious contention is that, even if it be conceded that the light was not fully up to the legal requirements in respect to the amount of light, still, when the evidence all shows that appellant had made an honest effort to comply with the statute and had partially failed, it cannot be adjudged guilty of a wilful violation of the law even if its partial failure arises from negligence on its part in the selection of the means or the method of their application with the view of complying with the statute. This argument is more ingenious than sound. The fallacy of the argument results from the assumed meaning of the word 'wilful,' as it is used in the miners' act. If it were necessary to show an evil intent or any blamable conduct to establish the wilfulness contemplated by this statute, then there would be more force in this contention. But no such construction of this statute has ever been recognized by this court. On the contrary, it has often been held that an act consciously done—that is, proceeding from the free and voluntary will—is wilful, within this statute."

The dissenting opinion is as follows:

"We do not agree with the majority that every failure on the part of a mine examiner to discover a dangerous condition in a mine is a wilful violation of the statute, nor do we think that the cases cited in the majority opinion support that doctrine. A wilful violation of this statute must necessarily be a conscious or knowing violation. To hold that a mine examiner is bound to discover a dangerous condition in the mine, even though by the honest application of every known means it is impossible to detect it at the time of the examination, and that a failure to discover such condition under such circumstances is wilful, is to read into the statute that which is not there, and is to require of a mine operator that which is impossible for him to perform. This statute is not meant to make the operator an insurer against every accident in his mine which results from dangerous conditions, but only requires him to cause an examination to be made by an authorized examiner to make the required records of the examination, and to mark such places as are found, upon proper examination and the honest use of approved methods, to be dangerous. It is only a failure to make such an examination that constitutes a wilful violation of the statute in respect to guarding against dangerous conditions in mines."

PICKETING—POLICE POWER—MUNICIPAL REGULATIONS—*Ex parte Williams, Supreme Court of California, 111 Pacific Reporter, page 1035.*—J. J. Williams had been arrested for the violation of a municipal ordinance of the city of Los Angeles prohibiting certain acts, among them the picketing of places of employment for the purpose of intimidating, threatening and coercing employees therein. Williams applied for a writ of *habeas corpus*, which was denied, as appears from the following opinion of Chief Justice Beatty, who spoke for the court:

"This is a petition for a writ of *habeas corpus* which has been denied by the court.

"The prisoner was arrested upon a complaint accusing him of violating a penal ordinance of the city of Los Angeles. The ordinance is quite comprehensive in its enumeration of the acts which it declares to be misdemeanors, and the prisoner was charged in the information with two distinct offenses, as defined by the ordinance: First, with 'loitering' on a public street in front of the Fulton Engine Works, for the purpose of inducing and influencing persons to refrain from doing and performing services and labor at said works; second, with 'picketing' in front of said works, for the purpose of intimidating, threatening and coercing such persons.

"It is argued in support of the petition that the ordinance is invalid. As to the provision concerning 'picketing,' for the purpose of intimidation, threatening, etc., I have no doubt that it is a valid exercise of the powers of the local legislature. As to the provisions relating to 'loitering,' I have very serious doubts. They are so vaguely comprehensive that a person stopping on the street anywhere in the vicinity of a place of business for the purpose of dissuading an employee from continuing in his employment might be convicted of a misdemeanor.

"I therefore concur in the order denying the writ, only upon the ground that the charge of picketing for the purpose of intimidation, etc., gives the police court jurisdiction to try the charge."

Decisions Under Common Law.

BOYCOTT—INJUNCTION—LABOR ORGANIZATIONS AS PARTIES—INTERFERENCE WITH EMPLOYMENT—PROOF—*Irving v. Joint District Council, United Brotherhood of Carpenters, etc., United States Circuit Court, Southern District of New York, 180 Federal Reporter, page 896.*—Irving & Casson, partners, operating a factory in the State of Massachusetts for the production of fine interior woodwork, had been made the objects of a movement by labor organizations of carpenters and joiners to influence them to run their factory as a closed shop. Letters had been written by officers of the unions to a number of persons with whom Irving & Casson were in business relations, actual or prospective, and instances were set out in the complainant's affidavits in which they had lost business because of notifications coming from the unions that they regarded the firm as unfair. Threats were also shown to have been made to take all union labor off contracts on which Irving & Casson were interested to the extent of furnishing some of the material. An injunction to restrain such acts was prayed for and granted, the case having been heard in July, 1910.

As defendants there were named the unincorporated labor organization of carpenters and joiners and a number of officers and members named individually. The objection was raised that an organization of this sort could not be brought before the court, as to which Judge Ward, who delivered the opinion of the court, said:

"The defendants object that the Joint District Council, being a voluntary unincorporated association, is not a citizen of any State, and therefore the court has no jurisdiction of it or of its members generally. I think this objection good. (Chapman *v.* Barney, 129 U. S. 677, 9 Sup. Ct. 426, 32 L. Ed. 800; Taylor *v.* Weir, 171 Fed. 636, 96 C. C. A. 438.) The bill may be dismissed as to the Joint District Council and its members generally, and stand as to the other defendants, in accordance with the practice indicated in Oxley Stave Co. *v.* Coopers' Union, (C. C.) 72 Fed. 695, affirmed 83 Fed. 912, 28 C. C. A. 99. There are intimations that service upon some of the members of such associations may be good as against the association and the other members in the United States *v.* Coal Dealers' Ass'n, (C. C.) 85 Fed. 252, American Steel and Wire Co. *v.* Wire Drawers' Unions 1 and 3, (C. C.) 90 Fed. 598, and Evenson *v.* Spaulding, 150 Fed. 517, 82 C. C. A. 263, 9 L. R. A. (N. S.) 904. If these cases mean more than

that members of the associations not served may be held guilty of contempt if they knowingly assist in the violation of an injunction which has been granted, I am not disposed to follow them."

The question of sufficient proof of interference with business was raised by the defendants, the various instances of alleged loss of business on account of the action of the organization and its officers being declared not sufficiently precise and authentic. As to this Judge Ward said:

"No doubt more and better evidence would be required on final hearing, but all that is needed upon a motion for a preliminary injunction is to satisfy that a cause of action exists and that irreparable injury will be done the complainants unless they are protected. In such a case a preliminary injunction ought to issue."

The court then took up the more general question of the right of the firm to an injunction, which he allowed, speaking as follows:

"The right of workingmen to unite for their own protection is undoubted, and so is their right to strike peaceably because of grievances; but their right to combine for the purpose of calling out the workmen of other employers who have no grievances, or to threaten owners, builders and architects that their contracts will be held up if they or any of their subcontractors use the complainants' trim, is quite another affair. To take the converse of the proposition: Will the defendants admit that employers may combine to prevent any employer from using union labor? May the employers agree not to sell to or contract with anyone who deals with an employer who uses union labor?

"Either of these propositions is destructive of the right of free men to labor for or to employ the labor of anyone the laborer or the employer wishes. See the language of Justice Harlan in Adair *v.* United States, 208 U. S. 161, 174, 28 Sup. Ct. 277, 52 L. Ed. 436. If the struggle is persisted in between labor and capital to establish a contrary view, ultimately either the workmen or the employers will be reduced to a condition of involuntary servitude.

"Whether the complainants do a large business, or, as the defendants allege, a small business, there is no doubt that the defendants by combination between themselves and with others have determined to force them against their will to maintain a closed shop in Massachusetts or go out of business, and to compel all persons in their employment, whether they will or not, to become members of the union or lose their employment. Of certain suggestions in the defendants' papers that the complainants are seeking to prevent the workingmen from organizing and striking and from communicating with each other, it may be said, in the words of Brown, J., in the Supreme Court of Pennsylvania, in Purvis *v.* Local No. 500, United Brotherhood of Carpenters and Joiners, 214 Pa. 348, 63 Atl. 585: . 'The zeal of counsel may account for, but can hardly excuse, the statement in appellants' paper book of the questions involved on this appeal. They are there stated to be: 'Is the dissemination by means of printed notices by a lawfully constituted lodge of union laborers to its members and employers of labor, of its adopted rules by virtue of its constitution forbidding its members to work non-union material, an unlawful conspiracy? Is it lawful by peaceful means to make effective such rules?' From an examination of the averments of plaintiffs' bill, the ample proofs submitted in support of them, and of the facts found by the court below, it is most manifest that the only question before us is whether the appellants were properly enjoined from injuring and destroying the business of the appellees, in pursuance of a conspiracy to do so, as a penalty for their refusal to unionize their mill. This would mean to the appellees, as they aver, that they would be compelled to employ only union workmen, and to yield their free and unrestricted right to select their own employees in the conduct of their business; that they would be compelled to submit themselves to the control of the union, and to put themselves within its power to dictate to them the number of hours to constitute a day's work in their mill, the compensation to be paid therefor, the time of payment thereof, and the selection of their employees. It would be a recognition of the power of the agents of the union to practically control their business.'

"The particular acts sought to be enjoined in this case are the calling out of the employees in other trades, who have no grievance against their employers, and the notification of owners, builders, architects, and third persons, that they are likely to have their operations held up if they use the complainants' trim. Whether the complainants may be found to have other rights on final hearing, and whether persons not parties may be guilty of contempt if they knowingly assist in the violation of the preliminary injunction to be issued, need not now be considered.

"Motion granted, with leave to the parties to submit within one week forms of order which they respectively think appropriate under this opinion."

EMPLOYER AND EMPLOYEE—INJURY TO THIRD PERSON BY EMPLOYEE—LIABILITY OF EMPLOYER—SCOPE OF AUTHORITY—*Tillar v. Reynolds, Supreme Court of Arkansas, 131 Southwestern Reporter, page 969.*—Mattie Reynolds, administratrix of the estate of William Reynolds, sued T. F. Tillar to recover damages for the wrongful death of her husband, William Reynolds. At the time of injury alleged to have occasioned Reynolds' death he was a prisoner working out a sentence of fine and imprisonment for a misdemeanor and was leased to Tillar under a contract with the county of Lincoln in the State of Arkansas. After having been on the convict farm for a week or two Reynolds died as the result, it was alleged, of an assault and whipping at the hands of one Gentry, who was Tillar's warden. Judgment was rendered Mrs. Reynolds in the amount of $3,750, whereupon Tillar appealed, raising three objections: First, that there was a misjoinder of actions; second, that the instruction of the lower court charging the employer with responsibility for his employee's actions was erroneous; and, third, that the evidence did not sustain the verdict. It was also claimed that the verdict was excessive. The joinder of actions referred to was that of bringing together the suit for the benefit of the widow and next of kin of the deceased and the other for the benefit of his estate. This the court held to be proper, stating that if the two actions had been brought separately they could have been consolidated by the court itself.

The instruction complained of was as follows: "You are further instructed that the employer who puts his agent or employee in a place of trust or responsibility, or commits to him the management of his business, is responsible when the agent or employee acting within the scope of his authority, through lack of judgment or discretion, or under the influence of passion, inflicts an unjustifiable injury upon another, even though he go beyond the strict line of his duty or authority." The portion of the instruction objected to was the clause "even though he go beyond the strict line of his duty or authority." It appeared from the evidence that the warden compelled Reynolds to strip and lie down across a log or block, face downward, and that he whipped him on the bare back with a leather strap thirty inches long and from one-half to three-fourths of an inch thick. This strap was fastened to a staff which Gentry used, striking with both hands from twelve to fifteen hard blows. One witness stated that he whipped him on the small part of the back. A rule of the penitentiary board prohibits whipping of any convict on his naked body, or at all except by authority of the superintendent, and limits the number of strokes to be administered to ten at any one time.

The court held that the instruction as to the employer's liability for his servant's act was not objectionable, saying:

"It is undisputed that Gentry, the warden, was defendant's agent in charge of the convict farm at the time Reynolds was delivered to the farm and at the time of his death, and for months thereafter, and that he was instructed to observe the rules laid down by the penitentiary board governing the convicts confined in the penitentiary, and charged by defendant not to depart from said rules in the management and punishment of the convicts placed on the farm. He had the authority to punish, and was acting within the scope of it when he inflicted the injury.

"In Ward *v.* Young, 42 Ark. 543, 544, in discussing the liability of the master for the tort of his servant, this court said: 'If Hawkins was clothed with the authority to protect the property, then his act was, in law, the act of Ward, notwithstanding it may have been contrary to express orders. Having employed the servant to protect his property or to maintain his possession, he is liable for all the acts done in pursuance of his employment, and within the power implied therefrom, even though he expressly directed the servant what to do. Having set in motion the agency for producing mischief, he is bound at his peril to prevent the mischievous consequences.' Further: 'It is not necessary, in order to fix the master's liability, that the servant should at the time of the injury have been acting under the master's orders or directions, or that the master should know that the servant was to do the particular act that produced the injury in question. It is enough if the act was within the scope of his employment, and, if so, the master is liable, even though the servant acted wilfully and in direct violation of his orders.' Continuing on page 553: 'It is generally sufficient to make the master responsible that he gave to the servant an authority or made it his duty to act in respect to the business in which he was engaged when the wrong was committed, and that the act complained of was done in the course of his employment.' 'The master who puts the servant in a place of trust or responsibility or commits to him the management of his business or the care of his property is justly held responsible when the servant through lack of judgment or discretion, or from infirmity of temper, or under the influence of passion aroused by the circumstances or the occasion, goes beyond the strict line of his duty or authority and inflicts an unjustifiable injury upon another.' (Conley [Cooley?] on Torts, p. 538.) In Railway *v.* Hackett, 58 Ark. 387, 24 S. W. 882, this court said: 'The question is, was he acting in the course of his employment?' 'If he was, the company is liable in damages for any wrongful act of his in the course of his employment, resulting in injury to another, though he exceeded his authority as such night watchman.' 'A servant may do an act expressly forbidden by his employer, and yet if it be within the scope of his authority the employer may be liable for resulting injury. This rule is constantly enforced in the cases against railroads, electric light and gas companies, and it applies to private persons who employ servants to transact their business.' (Pine Bluff W. & L. Co. *v.* Schneider, 62 Ark. 116, 34 S. W. 548, 33 L. R. A. 366.) This court on a question of this kind quoted with approval Clark & Skyles Law of Agency: 'It is a well-established rule that a principal is liable for all torts, negligence, or rather malfeasances committed by his agent in the course of his employment and for the principal's benefit, although such torts or negligences are not authorized by the principal, or even though he had forbidden or disapproved of them and the agent disobeyed or deviated from his instructions in committing them.' 'This rule is not based on the ground that the agent had authority, express or implied, to commit the tort, as is the case with contractual obligations binding on the principal, but is based on the ground that in such cases the agent represents the principal, and all acts done by the agent in the course of his employment are of the principal, and it is also on the ground of public policy that, where one of two innocent persons must suffer from the agent's wrongful act, it is just and reasonable that the principal, who has put it in the agent's power to commit such wrong, should bear the loss rather than the innocent third person.' (St. L., I. M. & S. R. Co. *v.* Grant, 75 Ark. 585, 88 S. W. 582.) There was no error in giving the instruction, and, on the whole, the instructions fairly presented the issues of fact to the jury. The evidence, although somewhat contradictory, tended strongly to show that the deceased was unlawfully and brutally whipped and beaten on his bare back with a leather strap four inches wide and from one-half to three-fourths of an inch thick, and about thirty inches long, attached to a staff or handle about eighteen inches long, by defendant's agents and warden; that he wielded the strap with both hands, striking more licks than felons in the penitentiary are permitted to be whipped, and on the bare skin, even if against defendant's directions; that deceased was compelled to work thereafter in the sun till

he reeled and staggered like a drunken man, and was sent from the field groaning with pain and urinating blood, and died that night early without being furnished any medical attention; that the beating might have and probably did produce death, and the jury so found, and the evidence amply sustains the verdict."

With reference to the question as to whether or not the verdict was excessive the court said:

"Was William Reynolds' life of the value of $3,750 to his widow and minor children? He was a strong man of sound bodily health, the sole support of his wife and children, about thirty-one years old, with an expectancy of life of thirty-four years, and shown to have been earning shortly before his death from $50 to $60 a month, most of which was contributed to the maintenance and support of his family, and the jury fixed the damages at that sum, which we do not regard excessive.

"Finding no error in the case, it is affirmed."

EMPLOYERS' LIABILITY—INCOMPETENT FELLOW-SERVANT—EVIDENCE—*Robbins v. Lewiston, Augusta and Waterville Street Railway Company, Supreme Judicial Court of Maine, 77 Atlantic Reporter, page 537.*—This case was an action by Oceolar Robbins, employed as a motorman by the defendant company, to recover damages for an injury received by him on July 20, 1907, through the negligence, as was alleged, of an incompetent crew on another car. The particular negligence of Taylor, the motorman, and Sanborn, the conductor, of the other car, consisted in the violation of an order to stop the special car which they were operating at the proper place, whereby a collision with the plaintiff's car was occasioned, resulting in serious and permanent injuries. Judgment was awarded Robbins in the Supreme Judicial Court of Kennebec county, and exceptions were taken to the admission of evidence as to prior acts of the members of the negligent crew such as made the employing company liable for injuries resulting from their retention in service. These exceptions were overruled and the judgment of the lower court stood.

"The views of the appellate court appear in the following extract from its opinion, which was delivered by Judge Spear, August 15, 1910. Having stated the facts, Judge Spear said:

"From this statement it will be seen that the plaintiff's action rests upon the claim that the defendant was negligent in the selection and retention of its servants, Taylor and Sanborn, especially Taylor, the motorman, when he knew, or by the exercise of due care should have known, his incompetency. The negligent act complained of was the running into the block without orders and against orders in violation of the rule.

"The fate of the motion depends upon the result of the exceptions. If the exceptions prevail, the evidence in support of the verdict disappears. If the exceptions fail, the verdict is well founded. In other words, the evidence, if admissible, amply sustains both the charge of unfitness of the servant and such notice thereof to the defendant that it knew or by due care ought to have known of his incompetency.

"But it is contended that the negligent acts of the servant, which by the verdict we must assume to be proven, were not of such a character as to fairly warrant the conclusion of incompetency. We think differently. Time after time he ran his car, in violation of rules and orders and against the protest even of the conductor, round curves at an excessive rate of speed. So persistently and recklessly did he do this that one conductor, after repeated reports of these wilful acts of misconduct to the superintendent of the defendant company, resigned his position rather than continue the hazard of further employment with this young man acting as motorman. He violated the controller handle rule, which forbids a motorman to leave the car without taking his controller handle with him. He ordered the substation to shut down the power, clearly exceeding his

authority. He refused to exchange passengers as ordered, thereby disobeying the direct order of the superintendent. He refused to obey the conductor's signal bells.

"These varied acts of insubordination seem to us more potent in their tendency to establish character for wilful disobedience than the repetition for an equal number of times of the same act, involving the precise element of character. The conduct of this servant as manifested by these various acts fully brings him within the rule of legal incompetency. In the legal sense, incompetency or unfitness is not predicated solely upon a want of ability and comprehension. It may be found side by side with even eminent skill, respecting the particular thing to be done, and yet that skill so often and persistently exercised in violation of rules, orders and regulations as to establish a character for such reckless acts as to render a person, in every way mentally competent, legally incompetent. Such is the theory of the decisions.

"In Consol. Coal Co. *v.* Seniger, 179 Ill. 370, 53 N. E. 733, the court say: 'One is incompetent who is wanting in the requisite qualifications for the business intrusted to him. (He) was incompetent, if he was wanting in the qualifications required for the performance of the service, whether arising out of lack of knowledge or capacity, or other imprudence, indolence or habitual carelessness.' In Maitland *v.* Gilbert Paper Co., 97 Wis. 476, 72 N. W. 1129 (65 Am. St. Rep. 137), the court say: 'A competent man is a reliable man. Incompetency exists not alone in physical or mental attributes, but in the disposition with which a person performs his duties, and, though he may be physically and mentally able to do all that is required of him, his disposition toward his work, and toward his employer and toward fellow-servants may make him an incompetent man.' And it has been said in the recent case of Hamann *v.* Bridge Co., 127 Wis. 550, 105 N. W. 1084: 'Incompetence in the law of negligence means want of ability suitable to the task, either as regards natural qualities or experience, or deficiency of disposition to use one's abilities and experience properly.'

"Therefore, if the evidence of these specific acts of the servant was admissible to prove both incompetency and knowledge, then, the defendant being amply charged with knowledge, the jury were authorized to find the servant incompetent, and to declare it negligence in longer retaining this young man in its employ as a motorman.

"This brings us to the question raised by the exceptions: Is the evidence of specific acts of prior negligence admissible to prove (1) incompetency, (2) knowledge to the master? All the exceptions but one, which will be discussed later, present the same question of law, and may be considered together.

"The defendant does not question the assertion that the great weight of authority is in favor of the admission of such testimony, and cites only Massachusetts and Pennsylvania in opposition. On the other hand, it appears from the plaintiff's brief that twenty-nine of the thirty-one States that have passed upon this question have decided in the affirmative. The precise question has never been raised in this State. We are, therefore, free to adopt that rule which seems best calculated upon the principles of reason and authority to attain the best results. Upon a careful examination of the authorities, it is the opinion of the court that the rule admitting specific acts of prior negligence tending to prove the incompetency of a servant when the master has actual knowledge of such acts, or by the exercise of due care should have had such knowledge, is the safer and better rule to establish. In arriving at this conclusion we have carefully reviewed and considered the reasons advanced by the courts for the directly opposite views by them declared.

"It is conceded that the plaintiff, when injured, was in the discharge of his duties and in the exercise of due care. The evidence discloses that he was injured by the negligence of the defendant's servant, that the servant was in fact incompetent, and that his incompetency was known to the defendant when the plaintiff was injured and prior thereto, and yet he was retained in its employ.

"Motion and exceptions overruled."

EMPLOYERS' LIABILITY—NEW TRIAL—SUCCESSIVE VERDICTS—DAMAGES—*Carr v. American Locomotive Company, Supreme Court of Rhode Island, 77 Atlantic Reporter, page 104.*—Peter F. Carr was employed by the defendant company as a rivet heater in the boiler shop, in which oil was used as a fuel, and was injured as a result of an alleged defective condition of the valve supplying the oil to the furnace. The defect was said to consist in the condition of the threads on the valve stem, which had become so worn that when partly opened it was in danger of being blown out by the pressure necessary to feed the oil as a spray for burning. Carr testified that on June 28, 1902, he started the fire in his heater in the usual way, and that when he had given the valve stem two or three turns it blew out and a stream of oil poured upon him, which became ignited and seriously burned his body, face and arms. The company offered in court as an exhibit, marked "Exhibit A," a combination of valves claimed by it to be the identical apparatus which Carr was using at the time that he was injured. This Carr denied, so that the identity of the valve became an important question in determining the negligence of the employer and his corresponding liability. During the statement of the facts involved, Judge Sweetland, who delivered the opinion of the court, said:

"This case has been tried four times. The first trial was in the common pleas division of the Supreme Court and resulted in a disagreement of the jury. The second trial was in the common pleas division of the Supreme Court, and the jury returned a verdict for the plaintiff for $18,000, with a special finding that Exhibit A includes the identical burner valve and stem which were operated by the plaintiff at the time of the accident. Upon petition the appellate division of the Supreme Court granted a new trial. (Carr *v.* American Locomotive Co., 26 R. I. 180, 58 Atl. 678.) Upon the establishment of the Superior Court this case was transferred to that court and the last two trials have been in that court. The third trial resulted in a verdict for the plaintiff for $20,000, with a special finding that the burner valve stem forming a part of Exhibit A was not the stem operated by the plaintiff at the time of the accident. The justice who presided at that trial denied the defendant's motion for a new trial. Upon exception to that decision this court sustained the exception and ordered a new trial. (Carr *v.* American Locomotive Co., 29 R. I. 276, 70 Atl. 196.) A fourth and last trial was had, with the result herein stated, of a verdict of $22,895, for the plaintiff, with a special finding by the jury that the burner valve stem forming a part of Exhibit A was not the stem operated by the plaintiff at the time of the accident."

The present appeal, therefore, was from the last trial in the Superior Court, based on exceptions made by both parties, Carr excepting to an order by the Superior Court granting a new trial in that court, and the company filing numerous exceptions to various rulings and instructions of the presiding justice. The trial resulted in the judgment of the Superior Court being affirmed and the order for a new trial reversed, with directions that judgment be entered upon the verdict, none of the company's exceptions being allowed. The opinion of the court, which was delivered on July 12, 1910, is in part as follows:

"From the record before us it does not appear whether at the first two trials the justices were asked to direct verdicts in favor of the defendant, but in each instance the case was submitted to the jury. At the third trial a motion was made that the jury be directed to return a verdict for the defendant. The motion was denied, and this court said in Carr *v.* American Locomotive Co., 29 R. I., at page 290, 70 Atl., at page 203: 'The forty-sixth exception was taken to the court's denial of a motion to direct a verdict for the defendant upon all the testimony. The evidence was conflicting and was properly left to the jury.' At the last trial the justice presiding refused to direct a verdict in the defendant's favor. We have carefully read and considered the transcript of the testimony given at the last trial. The plaintiff has produced the testimony of seven new witnesses in support of his claim as to the defendant's negligence and

the identity of the middle stem on Exhibit A. The case for the plaintiff is much stronger than at the former trial. Upon this testimony, to order judgment for the defendant would be highly improper. If this case was before us for the first time we should hesitate to disturb the verdict of the jury but for the decision of the justice presiding at the trial, whose decision will in ordinary cases be given much persuasive force by this court in appellate proceedings. Thus it has appeared to every judicial mind which has considered the testimony in this case that the deductions which may fairly be made upon the evidence are conflicting, that there is substantial evidence to support a verdict for the plaintiff, and that it is a case in which, under the Constitution of this State, the determination of the facts must be made by a jury. The effect of the two opinions of this court in granting new trials was not that the verdicts in the plaintiff's favor were entirely unjustified, for in that case the court would have exercised its authority and ordered a judgment for the defendant. The opinions indicate rather that the court was not satisfied that justice had been done, that in its opinion another opportunity should be given to the parties to present further testimony if they were able, and that the court might have the benefit of the finding of another jury upon the issues. In some States it has been provided by statute that there shall not be granted in any case to the same party more than two new trials on the ground that the verdict is contrary to the evidence, or that it is not sufficiently supported by the evidence. Thus fixing in those States the rule as to the effect of concurring verdicts when there has been no error of law. In the absence of such statutory provision the doctrine has been generally accepted by the courts of the various States, that, in cases where the evidence is conflicting and a judgment cannot be directed and successive juries have returned a verdict for the same party, there comes a time when the court upon the facts will no longer oppose their judgment to that of the jury, but will bring long-continued litigation to a close. This doctrine has not been accepted in a few cases and by some eminent jurists in dissenting opinions and the position has been taken as in the dissenting opinion in McCann *v.* New York, etc., 73 App. Div. 305, 76 N. Y. Supp. 684: 'A wrong committed, no matter how often, never makes a right. This verdict is wrong; it is the result of misconception, prejudice or partiality and ought not to be approved by the court. Upon substantially the same state of facts we have several times declared that the plaintiff ought not to recover, and yet we are about to permit a recovery, because the jury forsooth have, for the fourth time, committed the same wrong. The law imposes a duty upon this court to review verdicts, and whenever it can be seen that injustice has been done, by reason of the jury not properly considering the evidence, or that its action has been influenced either by prejudice or partiality, then the court ought, in the discharge of its duty, to fearlessly exercise the power given to it by the statute (Code Civ. Proc., sec. 1317) and right the wrong by setting the verdict aside and ordering a new trial, and this as many times as may be necessary to accomplish the proper result. Justice never tires, and an act ought not to be approved in its name which wrongfully takes property from one person and gives it to another.' This position presupposes in the judicial mind an infallibility in the determination of conflicting issues of fact which few courts would claim for themselves. If it is unquestioned in the mind of the court that a wrong has been committed by the verdict of the jury, surely the verdict should not be allowed to stand. The law provides a method by which such wrong can be corrected, and regardless of the jury's verdict a judgment should be ordered for the other party. That an appellate court has twice remanded a cause for a new trial indicates that the evidence of a wrong committed is not indubitable. The court may have an opinion or a suspicion that an injustice has been done, but it is unable to so declare with certainty. Courts recognize that it is not given to human tribunals to determine with the exactness of mathematical demonstration what is the true and just conclusion upon conflicting facts, with regard to which there is the opposing

testimony of witnesses, as to whose reliability and good faith different minds may reasonably disagree. Cases involving such conflicting statements of fact must of necessity be determined in the courts, ultimately by the finding of a jury, but the true solution cannot be found with demonstrative certainty. Hence an appellate court, having given sufficient opportunity for a fair determination of such disputed questions, will not longer interfere with the finding of the jury. To take this course is not to weakly permit or to approve the doing of a wrong in the name of justice, but is to recognize the proper functions of the court and the jury, and, after exercising due caution to prevent injustice, places the determination of disputed questions of fact in the tribunal provided by our Constitution and laws. This doctrine has been recognized by this court.

"In the case at bar we are of the opinion that the time has now arrived when this rule with regard to concurring verdicts should be applied, and if there has been no error of law occurring at the trial, which affects the jury's verdict, that verdict should be allowed to stand. This conclusion as to the force and effect of the three successive verdicts for the plaintiff, notwithstanding the decision of the justice of the Superior Court, is not in disregard of the rule in Wilcox *v.* Rhode Island Co., 29 R. I. 292, 70 Atl. 913. The doctrine as to the force of concurring verdicts is superior to the rule in the Wilcox case. When the time comes in any case for the application of that doctrine, it will be applied not only in disregard of the decision of the justice of the Superior Court, but also in disregard of our own former conclusions in the case.

"The defendant does not press before us the question of excessive damages which was one of the grounds for its motion for a new trial before the Superior Court. We have, however, considered the question, and although the amount awarded by the jury is large, in view of the very serious permanent injury to the plaintiff, we cannot say that it is excessive.

"The plaintiff's exceptions are sustained and the case is remitted to the Superior Court with direction to enter judgment upon the verdict."

EMPLOYERS' LIABILITY—SAFE PLACE TO WORK—ACT OF FOREMAN—*Campbell v. Jones, Supreme Court of Washington, 110 Pacific Reporter, page 1083.*—Murdock Campbell sued E. N. Jones and others to recover damages for injury received by him in the course of his employment. Campbell was engaged by a firm, Jones & Onserud, contractors for the construction of a railway, and was injured by the act of his foreman, Lundin, who, in uprooting a small stump for the purpose of procuring fuel for a fire to heat the tools used, accidentally loosened a stone on a hillside above the place where Campbell was at work. The suit was brought against both the railroad company and the contractors, and recovery was denied as against both parties in the Superior Court of Spokane county. On appeal, however, the case was reversed as against the contractors, while the railroad company was held to be in no way responsible.

The principal point of interest is the ruling of the court on the contention of the defendants that the act of Lundin in loosening the stone was that of a fellow-servant, for which they were not responsible. This view the court rejected, as appears from the following quotation from its opinion, as delivered by Judge Fullerton, October 3, 1910:

"We think the court erred in sustaining the challenge to the evidence made on behalf of the defendants, Jones & Onserud. They were the appellant's (Campbell's) employers, and owed to him the duty of furnishing him with a reasonably safe place in which to work, and the duty of keeping the place reasonably safe as long as they required him to work therein. This duty was non-delegable, and when they intrusted it to another they became responsible for the negligent performance of the duty by that other. If, therefore, Lundin, in uprooting the stump, acted negligently, and the place of work which had been furnished the appellant was thereby rendered

dangerous or unsafe, there can be no question of the liability of his principals therefor. His negligence was their negligence, and any negligent act in the line of his duty, which would render him personally responsible to the appellant, would render his principals likewise personally responsible. The liability of the respondents, Jones & Onserud, therefore, turns on the question whether the act of uprooting the stump was in itself negligent. But as to this we think the evidence made a case for the jury. The position of the stump with reference to the working place of the appellant, the manner in which it was uprooted, the frozen condition of the ground, and the fact that the act did in fact loosen a rock, which rolled down the hill and injured the appellant, were all matters to be considered by the jury in determining the character of the act, and the court should have submitted the question of negligence to them.

"We are aware of the contention of the respondents to the effect that Lundin, when he uprooted the stump, was not engaged in the master's work, but was performing the labor of a servant; that he was at that time a fellow-servant, and his acts, being those of a fellow-servant, would not render the master liable for injuries resulting therefrom, even though it were considered that the acts were negligent. But this reasoning overlooks the fact that the duty of the respondents to oversee the appellant's place of work was a continuing duty, obligatory upon them at all times; that while the work itself may have been servant's work, the duty to see that its performance did not result in injury to the servants working elsewhere was the master's duty. This duty, as we say, could not be delegated, and if the injury to appellant was caused by its negligent performance the master is liable."

LABOR ORGANIZATIONS—IDENTITY—TRANSFER OF AFFILIATION—EFFECT ON RIGHTS TO ASSOCIATION FUNDS—*Shipwrights', Joiners and Calkers' Association, Local No. 2, of Seattle, v. Mitchell, Supreme Court of Washington, 111 Pacific Reporter, page 780.*—The association named sued John McFarland Mitchell and another to recover certain funds claimed by the association, which had been transferred to alleged trustees of an association claiming the property on the ground that by a change of affiliation the association had forfeited its property rights. The association recovered judgment, whereupon Mitchell and his co-defendant appealed, the appeal resulting in the judgment of the lower court being affirmed. The opinion in the Supreme Court was delivered by Chief Justice Rudkin, and is as follows:

"The Shipwrights', Joiners' and Calkers' Association was organized in the city of Seattle about twenty-five years ago. The association is unincorporated, and is composed of numerous craftsmen voluntarily banded together for their mutual benefit and protection, and to provide health and death benefits for members. It is supported wholly by dues collected from members, which have varied from twenty-five cents to seventy cents per month, per capita, for several years last past. At various times since its organization the association has affiliated with different labor organizations, such as the American Federation of Labor, the Central Labor Council of Seattle, the International Union of Shipwrights, Calkers and Joiners, and the Pacific Coast Maritime Builders' Federation. From 1902 until late in 1906 the association was affiliated with the International Union of Shipwrights, Calkers and Joiners, as Local No. 11, and from the latter date until the present controvery arose, with the Pacific Coast Maritime Builders' Federation, as Local No. 2. While the membership in the association is continually changing by deaths, withdrawals and removals, and while its affiliations with other organizations have changed from time to time, the association itself remains, and has at all times maintained its entity and separate existence. On the 21st day of August, 1907, the association had in the National Bank of Commerce in Seattle the sum of $1,138.51, deposited in the name of the Shipwrights', Joiners' and Calkers' Association, Local No. 2. On the latter date, the defendants, who were

or had been president and treasurer, respectively, of the association, withdrew these funds from the bank and turned them over to three persons, claiming to be trustees of the Shipwrights', Joiners' and Calkers' Association, Local No. 11. The present action was instituted by the association, and by a large number of its members in its behalf, to recover the above sum for the benefit of the association. The case was tried before the court without a jury, and from a judgment in favor of the plaintiffs the defendants have appealed.

"The case presents questions of fact only. The fundamental error underlying the defense grows out of the erroneous assumption that the respondent association changed and became a different and separate entity every time it changed its affiliations with other labor unions or organizations. This assumption has no foundation in law or in fact. Regardless of the changes in membership, and the changes in its affiliations, the association itself has remained the same, and the appellants were guilty of gross breach of trust when they took it upon themselves to pay over its funds to a rival organization without warrant or authority.

"The judgment of the court below is therefore affirmed."

STRIKE INSURANCE—REPRESENTATIONS—CONSTRUCTION OF POLICY—INDEMNITY—*Buffalo Forge Company v. Mutual Security Company, Supreme Court of Errors of Connecticut, 76 Atlantic Reporter, page 995.*—This was a case involving the construction of a policy guaranteeing to the Buffalo Forge Company indemnity for losses caused by strikes. The payment of such indemnity had been demanded and refused, whereupon action was brought in the Superior Court of New Haven county, and judgment given the plaintiff. The insurance company then appealed, claiming a number of errors in the procedure of the lower court. On review the judgment was affirmed on July 12, 1910, on grounds which appear in the opinion of the court as delivered by Judge Robinson.

The opinion is, in part, as follows:

"We will first consider those reasons of appeal having relation to the claimed breaches of warranties and concealments and misrepresentations of material facts. The nature and novelty of this kind of insurance, and the numerous and interesting questions raised, seem to render it necessary to go somewhat into detail to define properly the attitude which this court has taken with reference to them.

"It appears from the record that the plaintiff on or before the 1st day of April, 1906, was a New York corporation and engaged in the manufacture of forges, blowers, engines, etc., at its factory located in Buffalo, N. Y. It also appears that the defendant on and before May 1, 1906, was a Connecticut corporation, organized under the law of this State, with power to make contracts of insurance to protect, indemnify and guarantee persons, firms or corporate bodies engaged in the business of manufacturing against any loss or damage resulting directly or indirectly from any interference with or interruption or suspension of business, or the use and operation of any manufacturing establishment in whole or in part by reason of a strike of the employees. It further appears that on April 9, 1906, the defendant's agent called upon the plaintiff in Buffalo and solicited the insurance in question, and that the application for the policy in suit, containing the 'schedule of warranties,' was executed April 9, 1906. The policy itself was executed by the defendant, and on May 1, 1906, mailed to the plaintiff, and received by the plaintiff at Buffalo on May 2, 1906. The plaintiff was a member of the Buffalo Foundrymen's Association, a local association affiliated with the National Foundrymen's Association, and was also a member of the so-called 'National Metal Trades Association.' The Buffalo Foundrymen's Association and the National Foundrymen's Association, just referred to, recognized, dealt and negotiated with the Molders' Union, and other unions, through their officers; and the plaintiff was prior

to and during the entire year of 1906 a member of all of said associations, and recognized unions through said associations, but did not recognize or deal with unions in any other way and did not operate any department of its factory as a union shop any further than as above stated, and the plaintiff was a union shop only to the extent indicated by membership in said associations. These are some of the material facts found by the trial court as bearing upon particular interrogatories and answers contained in certain paragraphs of the 'schedule of warranties' which the defendant now claims were not truthfully answered by the plaintiff. The defendant claims that questions 7 and 8 are of this class, and, further, that the language employed by the plaintiff in answering the eighth question was not correctly construed by the Superior Court.

"The finding of the court definitely settles any question of the untruthfulness in the answer to the seventh paragraph. This seventh paragraph was as follows: 'State any existing dispute with or demand made by employees in the last sixty days.' The answer was, 'None.' The trial judge finds that the plaintiff told the exact truth as to this matter.

"The eighth question and answer are as follows: '(8) Are you a union shop, and, if so, how many, and what unions do you recognize? Answer: Only so far as the National Foundrymen's Association and National Metal Trades Association.' The trial judge construed this answer to mean that the plaintiff was a union shop and recognized union shops only to the extent that the National Foundrymen's Association or the Metal Trades Association did so. The defendants criticize this construction as erroneous. We are unable to see how the court could with reason or propriety have adopted any other construction. That offered by the defendants was clearly not a solution of the matter, especially when we read in this connection the ninth and tenth answers in this schedule of warranties and consider the character of the organizations therein referred to. These questions and answers read as follows: '(9) If you are a non-union shop, state the different lines of craftsmen employed and the approximate number of each? Answer: Are non-union in forge and blower department; sheet-iron department; pattern department. Number employees about 75, 50 and 20 each, respectively. (10) State what national and local organizations you are a member of? Answer: National Foundrymen's Association, National Metal Trades Association, and local branch of both associations.' The construction of the eighth answer which the defendants claim should have been adopted by the trial judge is 'that the plaintiff's shop was not any more of a union shop than the National Foundrymen's Association and the National Metal Trades Association, and that the plaintiff recognized as unions only the National Foundrymen's Association and the National Metal Trades Association.' The weakness of this claim is manifest, when we consider that the organizations thus referred to were not 'unions' of workingmen, but organizations of manufacturers created for the purpose, among others, of dealing with trades unions; and it is quite apparent from the tenth question and answer that the defendant insurance company so understood the fact, and could not reasonably have attached any other meaning to the answer of the eighth warranty than that adopted by the court below—to-wit, that the plaintiff was a union shop, and recognized unions only through its membership in the two national associations referred to in the answer. But if the answers were ambiguous, indefinite, or lacking in clearness of expression, the defendant company certainly waived any objection on that score by issuing its policy on the application containing such defects. 'The issuance of a policy on an application containing ambiguous, indefinite or imperfect answers to questions propounded therein will waive any objections to the answers on the ground of defects therein.' (Cooley, vol. 3, p. 2634.)

"The defendant further claims that the answer in the seventh paragraph of the 'schedule of warranties' is in effect a continuing warranty from the date of the application, April 6, 1906, to the delivery of the policy, May 2, 1906, and that even if this answer were true when made, if the plaintiff knew of the impending strike trouble on April 21 or 22, 1906,

it then became the plaintiff's duty immediately to inform the defendant of the change of situation, and that its failure to do so vitiated the policy.

"It is hardly worth while to consider the validity of this claim as thus stated, in view of facts established on the trial and appearing in the finding of the trial judge. The court has found that the policy of insurance in question was mailed to the plaintiff on the 1st day of May, and received by the plaintiff at Buffalo on the 2d day of May, shortly after the molders in the employ of the plaintiff had on that same morning gone out on a strike; and the court further finds that on the same day, May 2, the plaintiff mailed its check for $500 to the defendant, as the premium on this policy of insurance, and accompanied this check with a letter acknowledging the receipt of the policy, and containing a statement that the molders had just gone out that morning on a strike, and that the Molders' Union had notified the Buffalo Foundrymen's Association some time ago that they would demand a nine-hour day and the same rate of pay as stated in their present demand; and the letter contained the further statement that during the conference of the last few days the employees had withdrawn their nine-hour demand, and, although they were in conference all day with the foundrymen, they came to no agreement, and, after an adjournment at 10 o'clock, they met and decided to place this agreement before the foundrymen this morning (May 2) and insist upon its being signed before returning to work; that the foundrymen had practically agreed to their wage rate, but objected to signing any agreement. The writer further says these matters are very uncertain, but expresses his private opinion that it will only be a day or two before the men return to work. It appears that the defendant received the check for $500, inclosed in this letter, and accepted and cashed it with full knowledge of the contents of this letter, and knowing that the molders in the plaintiff's employ had gone out on a strike on the morning of May 2, 1906, and that the controversy out of which this strike grew had been in existence for some time prior to May 2, 1906. The court finds that with such knowledge as this the defendant accepted this premium of $500 and retained it.

"These facts make it quite immaterial whether the warranty contained in the answer to the seventh paragraph of this schedule of warranties is or is not a continuing warranty, for, whichever it be, the defendant elected to accept the premium and take the chances of an early settlement of the strike trouble. Instead of assuming at once the position that the warranty was a continuing one, returning the premium and canceling the policy, on discovering that the conditions stated in the warranty had not in fact continued throughout the entire period after the application for and before the delivery of the policy, the defendant accepts and retains that premium with full knowledge of this situation. This must be treated as a waiver. Common honesty forbids their claiming a forfeiture of this policy under these circumstances.

"Again, the defendant company claims errors in the construction of those parts of the policy which relate to the amount recoverable, and to the mode in which such amount should be calculated. This necessitates an examination of the entire contract with some degree of care, and the questions arising, as to the several parts above indicated, will be best considered together. The amount of indemnity to the plaintiff stipulated in the agreement is 'an amount not exceeding $50,000,' and this indemnity is 'against all direct damage from suspension of operations at their factory plant situate at Buffalo, N. Y., caused by a strike of their employees, and hereinafter called a strike.' This is insurance against 'all direct damage from suspension of operations' caused by a strike. Looking a little further at the contract, we find that the liability of the defendant company is stated as follows: 'If a strike occurs during the continuance of this policy, so as to entirely suspend the production of goods, this company shall be liable for loss of net profits and for fixed charges to an amount not exceeding $166-2/3 per day for such working day of such entire suspension; and in case a strike prevents the making of a full daily average production

of goods, this company shall be liable for that proportion of the net profits and fixed charges which the production so prevented from being made bears to the average daily product, not exceeding in any case the amount issued. The average daily product shall be determined from the amount of goods last produced during a period of twelve months' full work previous to the strike, and losses shall be computed from the day of the occurrence of any strike to such time as the assured is able to produce the former daily average, and shall not be limited by the day of expiration named in this policy.'

"Now, it appears in this case that the suspension of production was partial only, and the contract makes provision for liability on the part of the insurance company for only a proportion of the net profits and fixed charges, something less than in the case of an entire suspension of production of goods. Now, looking at the contract, how do we find that proportion is to be measured and determined, and how are profits to be ascertained? What profits are to be taken? What is the criterion, what the standard by which to ascertain, whether the insured has lost profits by the partial suspension of production? It seems to us that the standard is plainly fixed by the contract, and that the net profits of the preceding year furnish the basis of estimate, and is the same as in the case of entire suspension of production. In the latter it is the whole of such loss up to the amount insured. In the case of partial suspension, it is the entire loss thus suffered up to the amount insured, but what that loss is must be ascertained through the medium of this proportional statement and calculation.

"In case of a partial suspension of production, the insurance company is to be liable for such proportion of the net profits and fixed charges as the production so prevented bears to the average daily production, not exceeding the amount insured. The contract assumes that there is a just and equitable relation between the two, and this relation they attempt to utilize in determining and adjusting the loss of the assured. They undertake to indemnify a party from loss occasioned by a suspension of his business, which from the very nature of the undertaking must be attended with and hampered by more or less uncertainty. However, this is the kind of contract which they wished to enter into and which they did in fact enter into. And apparently appreciating the difficulties and desiring to present an insurance proposition as free as possible from uncertainty and difficulty in adjustment of loss, they arrange that in case of a partial suspension of production the insurance company shall be liable for such proportion of the net profits and fixed charges as the production so prevented bears to the average daily production, not exceeding, of course, $50,000. The difference between the entire and the partial suspension being only a difference in amount, but computed from and by the same standard. This is, we think, quite plainly provided for in the contract, and this, we think, is the interpretation which the trial judge placed upon the language of the contract.

"The defendant's contention is that this part of the contract should be interpreted precisely as if it read 'this company shall be liable for that proportion of the loss of net profits and fixed charges,' etc. If it were interpreted in that way the company would be liable for only a part of the entire loss caused by the partial suspension of production—something quite foreign both to the terms and good faith of the contract. The terms of this contract negative any claim of liability for the actual loss of net profits or any proportion of such actual loss in case of partial suspension of production; there were evidently insuperable objections to any such assumption of liability as that because of the character of controversy likely to arise in each case, whether the partial suspension of production related to the most profitable or to the least profitable part of the business of the insured. The mode of calculating the loss actually adopted in the contract in case of partial suspension of production avoids such controversy by assuming that the net profits are equally distributed over the

entire production. And while this may be a fiction, it is a fiction which the insurance company evidently adopted, when it entered into this contract; and adopted it as an ingenious method of avoiding disputes as to the net profits of the particular portion of the business which was suspended.

"It is provided in the contract that, if the assured in the judgment of two-thirds of the directors of the insurance company is needlessly prolonging a strike, the company may demand of the assured that it be settled within one month, and if this is not done the company may, at its discretion, cancel the policy on five days' notice. To shut down in whole or in part the works affected by the strike, and to disband the organization of the manufacturing and selling departments proportionately to the loss of production caused by the strike, 'would needlessly prolong' the strike period and delay the resumption of ordinary production. And the correctness of this view is emphasized by the fact that by the terms of the contract the loss shall be computed from the date of the strike to such time 'as the assured is able to produce the former daily average and shall not be limited by the date of the expiration named in the policy.' The trial judge held that by 'fixed charges' were meant those expenses necessarily incurred in maintaining the organization in such a state of efficiency as would enable it to resume normal production without substantial delay after the strike was ended, or as the strike might be broken by a gradual return of employees. We see no error in this.

"It is a novel contract; but its novelty and the difficulties which the defendants themselves have introduced into it cannot fairly or justly be urged as reasons why the indemnity should not be paid by them, if calculated fairly and with approximate accuracy, which indeed is the only kind of accuracy apparently contemplated by all parties to the contract."

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